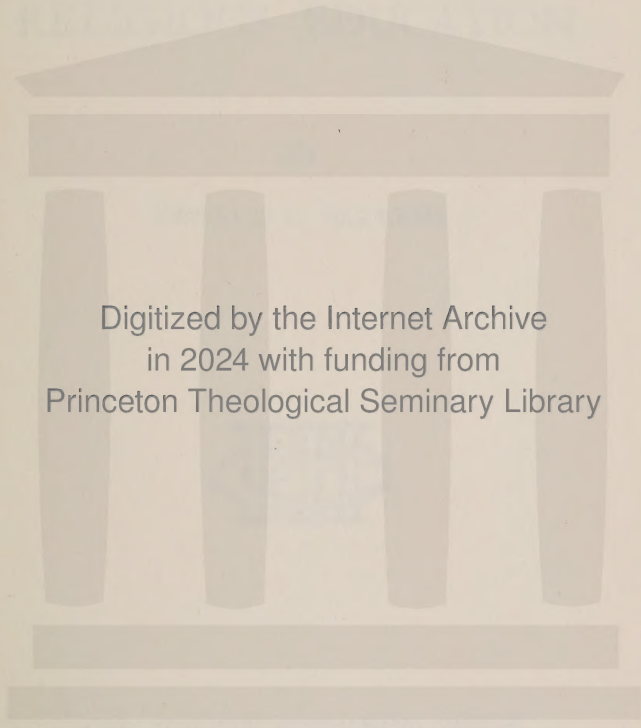
THE CONSTITUTION AND RELIGIOUS EDUCATION

HORACE B. SELLERS



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AND

RELIGIOUS EDUCATION

BY

HORACE B. SELLERS

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Dedicated to the
Young People of the United States
in Whose Hands Rest
The Welfare and Security of Our Nation
and Its Place of Leadership
Among the Nations
in the Promotion of World Peace

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INTRODUCTION

For several years Reverend Horace B. Sellers was an honored member of our Detroit Annual Conference. He held that position until his recent retirement from active ministry. During the years he has been much interested in the subject of religious education.

Our country has a religious heritage. The founders of our Republic believed in God. The spiritual concepts that went into the foundation of our national structure come from the Hebrew-Christian tradition.

There is no more urgent issue before us now than how these religious ideas can be maintained and perpetuated. Many articles and books have been published presenting various aspects of this situation. Whether we all agree on a detailed method, we are agreed on what we want to see accomplished.

It is to this subject that Mr. Sellers out of many years of mature study addresses himself in this book. His conviction that religion as a controlling influence in our society ought to be taught in our schools is clearly set forth. Those who have a concern about this important issue will find his treatment of the subject stimulating and helpful.

Marshall R. Reed,
Bishop the Detroit Area
The Methodist Church

The Constitution and Religious Education

I

PREFATORY

I am a Methodist Clergyman, a retired member of the Detroit Annual Conference. For many years I have been interested in religious education. This interest has been due to certain basic convictions which I have and hold and which are somewhat as follows:

First, I hold that whatever you would have in the life of the man or nation, you must first inculcate in the thinking and ideals of the children and youth.

Second, religion must be taught; and I hold that its teaching is as important as the teaching of reading, writing, arithmetic, or any other subject now being taught in our public schools. I consider that the teaching of religion is important from the standpoint of its influencing the ideals and character of those to whom it is taught.

Third, for me the Christian Religion is not an elective, but a must. While personal religion must always be a matter of personal opinion and conviction; from my study of religion and religions I believe that Jesus Christ embodied the highest ideals and attainment of moral character the world has known and his teachings the noblest ethics of mankind, which if received and practiced generally would most engender human brotherhood and world peace and thus promote the happiness and welfare of mankind everywhere.

Thus in a sense I am a biased witness, nevertheless, I take pride in the fact that I am an American citizen and I glory in our heritage of free institutions including our public schools together with our freedom to worship according to the dictates of our own conscience.

Fourth, in my thinking, the perpetuity of our free institutions and the security of our general welfare rests upon the double foundation of both the character and intelligence of the individual citizen. Our citizens must be intelligent enough to discern truth from propaganda, weigh issues, decide between candidates and parties; and have virtue sufficient to divorce selfishness and self-seeking from the public welfare and to act only upon the basis of the public good. I believe, therefore, that character in the citizen is as important as intelligence and that our national educational program must include training in religion as well as the other subjects included in our public school curriculum.

As a pastor I have emphasized the importance of religious training in my home, in my various pastorates, in various Sunday Schools and Young Peoples Institutes, as well as by teaching at times in the public schools where I have given courses in religion which were both elective and accredited being given with the assent and cooperation of the School Superintendent and the local School Board. Mainly I have presented two courses, (1) How We Got Our English Bible; (2) Science and the Bible. In the first course we studied the early manuscripts and versions of the Bible, the gradual development of both the old and the new testament canon, and then the various versions from the early Anglo-Saxon to our present English versions. In the second we tried to show the religious values still

remaining to students of the Bible who have been compelled to readjust many of their religious beliefs upon the basis of the evolutionary science in which our High School pupils are being taught. Thus we aimed to help those who might discard the Bible as an antique mortuary of religious beliefs from losing sight of its supreme religious contribution and significance for us today. While it was known that I, as a Methodist pastor, was presenting these courses, the courses were in no sense sectarian but simply factual studies of the subjects presented, and I have reason to believe that only good was accomplished.

It was, therefore, with somewhat of a feeling of consternation that I read of the decision of the United States Supreme Court in the Champaign, Illinois case, which seemingly forbad as unconstitutional all such efforts as were being made by many educational leaders throughout the nation to give our young people some training in religion by presenting courses which were accredited by the school authorities, but elective and without cost to the various school boards thus trying always to act within the framework of our Constitution as they supposed.

The decision of our Supreme Court led me to make an intensive study of the formation of our National Constitution and the religious opinions of the influential leaders of that day, and finally of the history of education in this country as the practical attempt through the intervening years to apply in education the principles laid down in our Constitution. This I have done to satisfy my own mind as to the accuracy of the Supreme Court in its interpretation of the Champaign Case and if adjudged to be accurate also to determine if possible what future approach could be

made to integrate the teaching of religion with the course of public school instruction within the framework of our Constitution.

This book is the result of that study while the conclusions presented are wholly my own. The evidence upon which the conclusions are formulated is given in sufficient substance that the reader may determine as to the accuracy of those conclusions. Trusting that this study may help in the general field of religious education by showing approaches clearly within the scope of our National Constitution and thus eventually bring to the young people of America the aid of religious study as well as that of other subjects now being taught in our public school is the hope of the author. The young people of America are I believe entitled to the very best in education. I take pleasure, therefore, in submitting the following evidence and conclusions.

Horace B. Sellers.

II

BRIEF HISTORY OF OUR NATIONAL CONSTITUTION

Ours is a constitutional government and the United States Constitution as interpreted by our United States Supreme Court constitutes the supreme law of the land alike binding both upon states and individual citizens. Some knowledge, therefore, of this document, which Gladstone declared, "The greatest state document of all Christian ages," is invaluable for our consideration.

The convention which formulated the Constitution met in Philadelphia, in May, 1789, and was composed of delegates from twelve of the then existing states, the State of Rhode Island refusing to take part. Washington was unanimously chosen as President and while he took almost no part in the debates of the convention his influence was strongly exerted in behalf of a stronger central government, and he helped to hold the delegates together when many times it seemed that the existing jealousies and suspicions among the delegates would lead to the dissolution of the convention itself. When it was suggested that palliatives and half-way measures would be more liable to gain acceptance by the people than the thoroughgoing reforms proposed in the new Constitution, Washington rose from his seat as President and stated, "It is too probable that no plan we propose will be accepted. Perhaps another dreadful conflict is to be sustained. If to please the people, we offer what we disapprove,

how can we afterward defend our work? Let us raise a standard to which the wise and honest can repair; the event is in the hand of God." These words from one whose patriotism was unquestioned acted as a moral tonic to all of the delegates and helped them to realize more fully that they were facing a situation where cowardice might prove fatal to the very existence of the infant nation.

The convention met by agreement behind closed doors, having decided that the delegates assembled might be more free to express their actual convictions behind closed doors and also that it might be better for the nation as a whole to view and decide upon their finished work than upon the separate parts. The most comprehensive account we have of the debates and proceedings of the convention are found in Madison's Journal which was not published until after Madison's death and fifty years after the convention itself. Two main plans were submitted to the delegates. New Jersey presented a plan for remodelling the Articles of Confederation which had been the law of the land during the Revolutionary War but which Articles had proven ineffective in the waging of the War when the need of the nation was most manifest and which Articles had proven wholly inadequate after the peace was signed and the states had been driven apart by internal dissensions. The reason for ineffectiveness under the Articles of Confederation lay principally in the fact that Congress was without authority to enforce its own provisions, it being simply a legislative and not an executive body. The Articles of Confederation recognized the states as Sovereign authorities and the states rendered an unwilling compliance with the legislation of Congress especially where state interests

and sectional jealousy existed. Congress could impose but not collect taxes and thus insufficient revenue was received and both national and state debts kept piling up as currency depreciated and credit suffered both nationally and internationally. The Articles of Confederation applied to the states as entities and not to the citizens as such and thus no loyalty was being developed within the nation to the National Congress or Government as such. Loss of confidence in government was undermining credit both at home and abroad. Something radical must be done if the nation was to survive and far-seeing delegates realized that more power to enforce its legislation must be given to the central government.

Thus it was natural that the Virginia Plan, the real author of which was James Madison, but which was submitted to the assembled delegates as the Virginia Plan by Edmund Randolph, then Governor of Virginia, was accepted as the basis for discussion and model for a new Constitution. After many debates and numerous amendments it was finally accepted by the delegates and in the final agreement many minds contributed in the compromises effected and provisions accepted. As finally accepted or completed at the end of about four months it was without any Bill of Rights or any religious provisions, whatsoever, excepting the one stating "no religious test shall ever be required as a qualification to any office of public trust under the United States." Many citizens including Thomas Jefferson, who at the time of the convention was absent in France serving as Ambassador, thought that a Bill of Rights ought to be an integral part of the Constitution although the Constitution as completed provided against ex post facto laws or bills of attainder, against sus-

pension of the privilege of habeas corpus, provided for right of trial by jury at the place where the crime was committed, defined treason and limited the punishment thereof, and granted the immunities and privileges of all states to the citizens of each state. The new Constitution sought also to equalize the power of the separate states by the different provisions for electing Congressmen and Senators and also to prevent possible tyranny or despotism by balancing the powers of the new government into the three constituent parts consisting of the legislative, executive and the judiciary.

As the process of debate went on throughout the nation pursuant to its acceptance by the people of the various states, some refused to ratify until assured that a Bill of Rights would be provided by the first Congress after ratification by the states. Accordingly James Madison submitted to the first Congress a Bill containing twelve provisions for a Bill of Rights, ten of which were later accepted by the various states and also became the law of the nation by the latter part of 1791.

It should be borne in mind that these first ten amendments are of national effect and refer alone to laws enacted by our national Congress and have no reference to state action except as state action shall infringe or jeopardize the liberties guaranteed under our Constitution. Only Articles one and ten of the original Bill of Rights declared to be in force December 15, 1791, and Article fourteen later ratified and declared to be in force July 28, 1868, known as the Reconstruction Amendment have any relevance to the matter of religious education. Those portions which have reference to our study are given in the following chapter wherein I also indicate the legislative provisions of the various

states of the Union in their attempt to carry out the principles of our National Constitution. I give these in the chronological order of their adoption since I believe that this method will best reflect the trend of public opinion in the acceptance and interpretation of the provision of our National Constitution.

III

NATIONAL AMENDMENTS AND STATE CONSTITUTIONS

Article I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or of the right of people peaceably to assemble, and to petition the Government for a redress of grievances.

Article 10. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Article 14. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

The State Constitutions herein following are given in the order of their adoption and only those parts which have reference to religion or to education as attempted by the various States. Thus they indicate the effort of the various States to comply with the provisions of our National Constitution as they interpreted its meaning.

Massachusetts—1780

Art. 2. It is the right, as well as the duty of all men in society, publicly and at stated seasons to worship the Supreme Being, the great Creator and Preserver of the Universe. And no subject shall be hurt, molested, or restrained in his Person, Liberty, or Estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious professions or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.

The Eleventh Amendment is a modification of the 3rd Article of the original Bill of Rights adopted and ratified in the year 1833. It reads as follows: As the public worship of God and instruction in piety, religion and morality, promote the happiness and prosperity of a people, and the security of a Republican Government:—therefore, the several religious societies of the commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors, or religious teachers, to contract with them for their support, to raise money for erecting or repairing houses for public worship, for the maintenance of religious instruction, and for the payment of necessary expenses; and all persons belonging to any religious society shall be taken and held to be members, until they shall file with the clerk of such society, a written notice, declaring the dissolution of their membership, and thenceforth shall not be liable for any grant or contract, which may be thereafter made or entered into by such society:—and all religious sects and denominations demeaning themselves peaceably and as good citi-

zens of the Commonwealth, shall be equally under the protection of the law, and no subordination of any one sect or denomination to another shall ever be established by law.

Art. 18. Adopted by legislature in 1854 and 1855, ratified by people—1855.

All monies raised by taxation in the towns and cities for the support of public schools, and all monies which may be appropriated by the State for the support of common schools, shall be applied to, and expended in, no other schools than those which are conducted according to law, under the order or superintendence of the town or city in which the money is to be expended; and such monies shall never be appropriated to any religious sect for the maintenance exclusively of its own schools.

Vermont—1793—Later Amended in 1913

Art. 3. That all people have a natural and inalienable right to worship Almighty God, according to the dictates of their own conscience and understandings, as in their opinion shall be regulated by the Word of God; and that no man ought to, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of his conscience, nor can any man be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments or peculiar mode of religious worship; and that no authority can, or ought to be vested in, or assumed by, any power whatever, that shall in any way interfere with, or in any manner control the rights of conscience in the free exercise of religious worship. Nevertheless,

every sect of Christians ought to observe the Sabbath or Lord's Day, and keep up some sort of religious worship, which to them shall seem most agreeable in the revealed will of God.

Sect. 64. Laws for the encouragement of virtue and prevention of vice ought to be constantly kept in force, and duly executed; and a competent number of schools ought to be maintained in each town for the convenient instruction of youth; and one or more grammar schools ought to be incorporated and properly supported in each county of this State. And all religious societies, or bodies of men that may be united or incorporated for the advancement of religion and learning, or for other pious and charitable purposes shall be encouraged and protected in the enjoyment of the privileges, immunities, and estates, which they in justice ought to enjoy, under such regulations as the General Assembly of this State shall direct.

Connecticut—1818

Art. 7, Sect. 1. It being the duty of all men to worship the Supreme Being the great Creator and Preserver of the Universe, and their right to render that worship, in the mode most consistent with the dictates of their own consciences; no person shall by law be compelled to join or support, nor be classed with, or associated to, any congregation, church, or religious association. But every person now belonging to such congregation, church, or religious association shall remain a member thereof until he shall have separated himself therefrom, in the manner hereinafter provided. And each and every society or denomination of Christians in this State, shall have and enjoy the same

and equal powers, rights and privileges; and shall have power and authority to maintain and support the ministers or teachers of their respective denominations, and to build and repair houses for public worship, by a tax on the members of any such society only, to be laid by a major vote of the members assembled at any society meeting, warned or held according to law, or in any other manner.

Section 2. If any person shall choose to separate himself from the society or denomination of Christians to which he may belong, and shall leave a written notice with the clerk of such society, he shall thereupon be no longer liable for any future expenses which may be incurred by said society.

Art. 8, Sect. 2. The fund, called the School Fund, shall remain a perpetual fund, the interest of which shall be inviolably appropriated to the support and encouragement of the public, or common schools throughout the State, and for the equal benefit of all the people thereof. The value and amount of said fund, shall, as soon as practicable, be ascertained as the General Assembly may prescribe, published and recorded in the Controller's office; and no law shall ever be made, authorizing said fund to be diverted to any other use than the encouragement and support of public or common schools, among the several school societies, as justice and equity shall require.

Maine—1819

Art. 1, Sec. 3. All men have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no one shall be hurt, molested, or restrained in his person, liberty, or

estate for worshipping God in the manner and season most agreeable to the dictates of his conscience, nor for his religious professions or sentiments, provided he does not disturb the public peace, nor obstruct others in their religious worship;—and all persons demeaning themselves peaceably, as good members of the State, shall be equally under the protection of the laws, and no subordination or preference of any one sect or denomination to another shall ever be established by law, nor shall any religious test be required for any office or trust under this State; and all religious societies in this State, whether incorporate or unincorporate, shall at all times have the exclusive right of electing their public teachers, and contracting with them for their support and maintenance.

Art. 8. A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people; to promote this important object, the legislature are authorized, and it shall be their duty to require, the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools; and it shall further be the duty to encourage and suitably endow from time to time, as the circumstances of the people may authorize, all academies, colleges, and seminaries of learning within the State; provided, that no donation, grant, or endowment shall at any time be made by the Legislature to any literary institution now established, or which may hereafter be established, unless at the time of making such endowment, the Legislature of the State, shall have the right to grant any further powers, to alter, limit, or restrain any of the powers vested in any such literary institution, as shall be judged necessary to promote the best interests thereof.

Rhode Island—1842

Art. 1, Sect. 3. Whereas, Almighty God hath created the mind free; and all attempts to influence it by temporal punishments or burdens, or by civil incapacitations, tend to beget habits of hypocrisy and meanness; and whereas a principal object of our venerable ancestors in their migration to this country, and their settlement of this State, was, as they expressed it to hold forth a lively experiment, that a flourishing civil, state may stand and be best maintained with full liberty in religious concernments; we, therefore, declare that no man shall be compelled to frequent or to support any religious worship, place, or ministry whatever, except in fulfillment of his own voluntary contract; nor enforced, restrained, molested, or burthened in his body or goods; nor disqualified from holding any office; nor otherwise suffer on account of his religious belief; and that every man shall be free to worship God according to the dictates of his own conscience, and to profess and by arguments to maintain his opinion in matters of religion; and that the same shall in no wise diminish, enlarge, or affect his civil capacity.

Art. 12, Sect. 1. The diffusion of knowledge as well as of virtue among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the General Assembly to promote public schools, and to adopt all means which they may deem necessary and proper to secure to the people the advantages and opportunities of education.

Sect. 4. The General Assembly shall make all necessary provisions by law for carrying this article into effect. They shall not divert said money or fund from the aforesaid uses, nor borrow, appropriate, or use the

same, or any part thereof, for any other purpose, under any pretense whatsoever.

New Jersey—1844

Art. 1, Sect. 3. No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience, nor under any pretense whatever, to be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or what he has deliberately and voluntarily engaged to perform.

Sect. 4. There shall be no establishment of one religious sect in preference to another; no religious test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right merely on account of his religious principles.

Art. 4, Sect. 7, Part 6. The fund for the support of free schools, and all other money, stock, and other property which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment said fund shall be securely invested and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of public free schools, for the equal benefit of all the

people of the State; and it shall not be competent for the legislature to borrow, appropriate, or use the said fund, or any part thereof, for any other purpose, under any pretense whatever. The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in this State between the ages of five and eighteen years.

Wisconsin—1848

Art. 1, Sect. 18. The right of every man to worship Almighty God, according to the dictates of his own conscience, shall never be infringed; nor shall any man be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; nor shall any control of, or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishments, or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious, or theological seminaries.

Sect. 19. No religious test shall ever be required as a qualification for any office of public trust under the State, and no person shall be rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion.

Art. 10, Sect. 3. The legislature shall provide by law for the establishment of District Schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition, to all children between the ages of four and twenty years, and no sectarian instruction shall be allowed therein.

Indiana—1851

Art. 1, Sect. 2. All men shall be secured in their natural right to worship Almighty God, according to the dictates of their own conscience.

Sect. 3. No law shall in any case, whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

Sect. 4. No preference shall be given by law to any creed, religious society, or mode of worship; and no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent.

Sect. 5. No religious test shall be required as a qualification for any office of trust or profit.

Sect. 6. No money shall be drawn from the treasury for the benefit of any religious or theological institution.

Sect. 7. No person shall be rendered incompetent as a witness in consequence of his opinion on matters of religion.

Art. 8, Sect. 1. Knowledge and learning generally diffused throughout a community, being essential to the preservation of a free government, it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific and agricultural improvement, and to provide by law for a general and uniform system of common schools, wherein tuition shall be without charge, and equally open to all.

Sect. 3. The principal of the public school fund shall remain a perpetual fund, which may be increased, but may never be diminished; and the income thereof shall be inviolably appropriated to the support of common schools, and to no other purpose whatever.

Ohio—1851—Amended 1912

Art. 1, Sect. 7. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent, and no preference shall be given by law to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

Art. 6, Sect. 2. The General Assembly shall make such provisions by taxation or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of schools throughout the State, but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this State.

Iowa—1857

Art. 1, Sect. 3. The General Assembly shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; nor shall any person be compelled to attend any place of worship, pay taxes,

or other rates, for building or repairing places of worship, or the maintenance of any minister or ministry.

Sect. 4. No religious test shall be required as a qualification for any office of public trust, and no person shall be deprived of any of his rights, privileges, or capacities, or disqualified from the performance of any of his public or private duties, or rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion; and any party to any judicial proceedings shall have the right to use as a witness, or take the testimony of any other person, not disqualified on account of interest, who may be cognizant of any fact material to the case; and parties to suits, may be witnesses as provided by law.

Art. 9, Sect. 3. The General Assembly shall encourage by all suitable means, the promotion of intellectual, moral, scientific, and agricultural improvement. This section also provides the manner of creating "a perpetual fund, the interest of which together with all rents of the unsold lands, and such other means as the General Assembly may provide, shall be inviolably appropriated to the support of common schools throughout the State."

Minnesota—1857

Art. 1, Sect. 16. The enumeration of rights in this Constitution shall not be construed to deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed, nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry against his consent;

nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State, nor shall any money be drawn from the treasury for the benefit of any religious societies, or religious or theological seminaries.

Art. 8, Sect. 3. The legislature shall make provision by taxation and otherwise, as with the income arising from the school fund, will secure a thorough and efficient system of public schools in each township of the State. But in no case shall the money derived as aforesaid, be appropriated or used for the support of schools wherein the distinctive doctrines, creeds or tenets of any particular Christian or other religious sect are promulgated or taught.

Oregon—1857

Art. 1, Sect. 2. All men shall be secured in the natural right to worship Almighty God according to the dictates of their own conscience.

Sect. 3. No law shall in any case whatever control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

Sect. 4. No religious test shall ever be required as a qualification for any office of trust or profit.

Sect. 5. No money shall be drawn from the treasury for the benefit of any religious or theological institution, nor shall any money be appropriated for the payment of any religious services in either house of the legislative Assembly.

Sect. 6. No person shall be rendered incompetent as

a witness or juror in consequence of his opinions on matters of religion, nor be questioned in any court of justice touching his religious belief, to affect the weight of his testimony.

Art. 8, Sect. 2. Provides for the creation of "a separate and irreducible fund, to be called the common school fund, the interest of which, together with all other revenues derived from the sale of the school land mentioned in this section, shall be exclusively applied to the support and maintenance of common schools in each school district, and the purchase of suitable libraries and apparatus therefor."

Kansas—1859

Bill of Rights. Sect. 7. The right to worship God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend or support any form of worship; nor shall any control of or interference with the rights of conscience be permitted; nor any preference be given by law to any religious establishment or mode of worship. No religious test or property qualification shall be required for any office of public trust, nor for any vote at any election; nor shall any person be incompetent to testify on account of religious belief.

Art. 6, Sect. 8. No religious sect or sects shall ever control any part of the common school or university funds of the State.

Nevada—1864

Art. 1, Sect. 4. The free exercise and enjoyment of religious profession or worship without discrimination or preference, shall forever be allowed in this State;

and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of this State.

Art. 11, Sect. 9. No sectarian instruction shall be imparted or tolerated in any school or university that may be established under this Constitution.

Maryland—1867

Declaration of Rights. Art. 36. That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to the protection of their religious liberty; wherefore, no person ought by any law to be molested in his person or estate, on account of his religious persuasion or profession, or for his religious practice, unless, under the color of religion he shall disturb the good order, peace, or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil, or religious rights; nor ought any person be compelled to frequent, or maintain, or contribute, unless on contract, to maintain any place of worship or any ministry; nor shall any person otherwise competent, be deemed incompetent as a witness or juror on account of his religious belief; provided, he believes in the existence of God, and that under His dispensation such person shall be held morally accountable for his acts, and be rewarded or punished in this world or the world to come.

Art. 37. That no religious test ought ever to be re-

quired as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God; nor shall the legislature prescribe any other oath of office than the oath prescribed by this Constitution.

Art. 8, Sect. 3. The school fund of the State shall be kept inviolate, and appropriated only to the purposes of education.

Illinois—1870

Art. 2, Sect. 3. The free exercise and enjoyment of religious profession and worship without discrimination shall be forever guaranteed, and no person shall be denied any civil or political right, privilege, or capacity on account of his religious opinions; but the liberty of conscience secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship.

Art. 8, Sect. 3. Neither the General Assembly, nor any county, city, township, school district, or other public corporation shall ever make any appropriation, or pay from any public fund, whatever, anything in aid of any church or sectarian purpose, or help to support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian denomination, whatever; nor shall any grant, donation of land, money, or other property ever be made by the State or any

such public corporation to any church or for any sectarian purpose.

Tennessee—1870

Art. 1, Sect. 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; that no human authority can in any case whatever, control or interfere with the right of conscience; and that no preference shall ever be given by law to any religious establishment or mode of worship.

Sect. 4. That no political or religious test, other than an oath to support the Constitution of the United States and of this State, shall ever be required as a qualification to any office or public trust under this State.

Art. 9, Sect. 1. Whereas ministers of the gospel are by their profession dedicated to God and the care of souls, and ought not to be diverted from the great duties of their functions; therefore, no minister of the gospel, or priest of any denomination, whatever, shall be eligible to a seat in either house of the Legislature.

Sect. 2. No person who denies the being of God, or a future state of rewards and punishments, shall hold any office in the civil department of this State.

Art. 11, Sect. 12. "Knowledge, learning and virtue being essential to the preservation of republican institutions, and the diffusion of the opportunities and advantages of education throughout the different portions of the State being highly conducive to the pro-

motion of this end," provides for the creation of a common school fund; "the principal thereof shall be inviolably appropriated to the support and encouragement of common schools throughout the State, and for the equal benefit of all the people thereof; and no law shall be made authorizing said fund or any part thereof to be diverted to any other use than the support and encouragement of common schools."

West Virginia—1872

Art. 2, Sect. 15. No man shall be compelled to frequent or to support any religious worship, place or ministry, whatsoever; nor shall any man be enforced, restrained, molested, or burthened in his body or goods, or otherwise suffer on account of his religious opinions or belief, but all men shall be free to profess and by argument to maintain their opinions in matters of religion; and the same shall in no wise affect, diminish, or enlarge their civil capacities; and the Legislature shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people within any district within this State, to levy upon themselves or others any tax for the erection or repair of any house of worship, or for the support of any church or ministry, but it shall be left free for every person to select his religious instructor, and to make for his support, such private contract as he shall please.

Art. 12, Sect. 4. Provides for the creation of a public School Fund and that "the interest thereof shall be annually applied to the support of free schools throughout the State, and to no other purpose whatever."

Pennsylvania—1873

Art. 1, Sect. 3. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; no human authority can in any case whatever, control or interfere with the rights of conscience and no preference shall ever be given by law to any religious establishments or modes of worship.

Sect. 4. No person who acknowledges the being of a God, and a future state of rewards and punishments, shall on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this commonwealth.

Art. 10, Sect. 2. No money raised for the support of the schools of the commonwealth shall be apportioned to or used for the support of any sectarian school.

Arkansas—1874

Art. 2, Sect. 24. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect, or support any place of worship; or to maintain any ministry against his consent. No human authority can, in any case or manner whatever, control or interfere with the right of conscience; and no preference shall ever be given by law to any religious establishment, denomination, or mode of worship above any other.

Sect. 25. Religion, morality, and knowledge being essential to good government, the General Assembly

shall enact suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship.

Sect. 26. No religious test shall ever be required of any person as a qualification to vote or hold office, nor shall any person be rendered incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths or affirmations.

Art. 13, Sect. 3. The General Assembly shall provide by general laws for the support of common schools by taxes, which shall never exceed in any one year three mills on the dollar on the taxable property of the State, and by an annual per capita tax of one dollar, to be assessed on every male inhabitant of this State over twenty-one years of age. Provided, the General Assembly may by general law authorize school districts to levy by a vote of the qualified electors of such district a tax not to exceed twelve mills on the dollar in any one year for school purposes. Provided, further, that no such tax shall be appropriated to any other purpose nor to any other district than that for which it was levied.

Missouri—1875

Art. 2, Sect. 5. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no person can on account of his religious opinions, be rendered ineligible to any office of trust or profit under this State, nor be disqualified from testifying or serving as a juror; that no human authority can control or interfere with the rights of conscience; that no person

ought, by any law to be molested in his person or estate, on account of his religious persuasion or profession; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace, or safety of this State, or with the rights of others.

Sect. 6. That no person can be compelled to erect, support, or attend any place or system of worship, or to maintain or support any priest, minister, preacher, or teacher of any sect, church, creed or denomination of religion; but if any person shall voluntarily make a contract for any such object, he shall be held to the performance of the same.

Sect. 7. That no money shall ever be taken from the public treasury directly or indirectly, in aid of any church, sect, or denomination of religion, or in aid of any priest, minister, preacher, or teacher, thereof as such; and that no preference shall be given to, nor any discrimination made against any church, sect, or creed of religion, or any form of religious faith or worship.

Art. 11, Sect. 11. Neither the General Assembly nor any county, city, town, township, school district or other municipal corporation, shall ever make an appropriation or pay from any public fund whatever, anything in aid of any religious creed, church, or sectarian purpose, or to help to support or to sustain any private or public school, academy, seminary, college, university or other institution of learning controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any county, city, town, or other mun-

icipal corporation, for any religious creed, church, or sectarian purpose whatever.

Nebraska—1875

Art. 1, Sect. 4. All persons have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No person shall be compelled to attend, erect, or support any place of worship against his consent, and no preference shall be given by law to any religious society, nor shall any interference with the rights of conscience be permitted. No religious test shall be required as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief, but nothing herein shall be construed to dispense with oaths or affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the Legislature to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools, and the means of instruction.

Art. 8, Sect. 11. No sectarian instruction shall be allowed in any school or institution supported in whole or in part by the public funds set apart for educational purposes; nor shall the State accept any grant, conveyance, or bequest of money, lands or other property to be used for sectarian purposes.

Colorado—1876

Art. 2, Sect. 4. The free exercise and enjoyment of religious profession and worship without discrimination shall hereafter be forever guaranteed; and no per-

son shall be denied any civil or political right, privilege, or capacity on account of his opinions concerning religion; but the liberty of conscience hereby secured shall not be construed to dispense with oaths and affirmations, excuse acts of licentiousness, or justify practices inconsistent with the good order, peace, or safety of the State. No person shall be required to attend, or support any ministry, or place of worship, religious sect or denomination against his consent; nor shall any preference be given by law to any religious denomination or mode of worship.

Art. 9, Sect. 7. Neither the General Assembly, nor any county, city, town, township, school district or other public corporation shall ever make any appropriation, or pay from any public fund or monies whatever, anything in aid of any church or sectarian society, or for any sectarian purpose, or to help to support or to sustain any school, academy, seminary, college, university, or other literary or scientific institution controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money, or other personal property ever be made by the State, or any such public corporation, to any church or for any sectarian purpose.

Sect. 8. No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the State, either as teacher or student, and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatever. No sectarian tenets or doctrine shall ever be taught in the public schools, nor shall any classification or distinction of pupils be made on account of race or color.

North Carolina—1876

Art. 1, Sect. 26. All men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority should, in any case whatever, control or interfere with the rights of conscience.

Art. 9, Sect. 1. Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

Sect. 4. Provides for the creation of a fund which "shall be faithfully appropriated for establishing and maintaining in this State a system of free public schools, and for no other uses or purposes whatsoever."

Texas—1876

Art. 1, Sect. 6. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent. No human authority ought in any case whatever, to control or interfere with the rights of conscience in the matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

Sect. 7. No money shall be appropriated or drawn from the treasury for the benefit of any sect or religious society, theological or religious seminary; nor

shall property belonging to the State be appropriated for any such purpose.

Georgia—1877

Art. 1, Part 12. All men have the natural and inalienable right to worship God, according to the dictates of his own conscience, and no human authority should in any case control or interfere with the rights of conscience.

Sect. 13. No inhabitant of this State shall be molested in person or property, or prohibited from any public office or trust, on account of his religious opinions; but the right of liberty of conscience shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the State.

Sect. 14. No money shall ever be taken from the public treasury, directly or indirectly, in aid of any sect, church, or denomination of religionists, or of any sectarian institution.

California—1879

Are. 1, Sect. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall be forever guaranteed in this State; and no person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or to justify practices inconsistent with the peace and safety of this State.

Art. 9, Sect. 8. No public money shall ever be appropriated for the support of any sectarian or denom-

inational school, nor any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction therein be permitted, directly or indirectly, in any of the common schools of the State.

Florida—1885

Art. 5. Declaration of Rights. The free exercise and enjoyment of religious profession and worship shall be forever allowed in this State, and no person shall be rendered incompetent as a witness on account of his religious opinions; but the liberty of conscience hereby secured shall not be so construed as to justify licentiousness or practices subversive of, or inconsistent with the peace or moral safety of the State or society.

Sec. 6. No preference shall be given by law to any church, sect, or mode of worship, and no money shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination, or in aid of any sectarian institution.

Art. 12, Sect. 13. No law shall be enacted authorizing the diversion or the lending of any county or district school funds, or the appropriation of any part of the permanent or available school fund to any other than school purposes; nor shall the same, or any part thereof, be appropriated to or used in support of any sectarian school.

Montana—1889

Art. 3, Sect. 4. The free exercise and enjoyment of religious profession and worship without discrimination, shall forever hereafter be guaranteed, and no

person shall be denied any civil right or privilege on account of his opinions concerning religion, but the liberty and conscience hereby secured shall not be construed to dispense with oaths and affirmations, excuse acts of licentiousness by bigamous or polygamous marraige, or otherwise, or justify practices inconsistent with the good order, peace, or safety of the State, or opposed to the civil authority thereof, or of the United States. No person shall be required to attend any place of worship or support any ministry, religious sect or denomination, against his consent; nor shall any preference be given by law to any religious denomination or mode of worship.

Art. 11, Sect. 8. Neither the legislative Assembly, nor any city, town, county or school district, or public corporation, shall ever make directly or indirectly, any appropriation, or pay from any public fund or moneys whatever, or make any grant of lands or other property, in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination whatever.

Sect. 9. No religious or partisan test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the State, either as teacher or student; nor shall attendance be required at any religious service whatever, nor shall any sectarian tenets be taught in any public educational institution of the State, nor shall any person be debarred admission to any of the collegiate departments of the university on account of sex.

North Dakota—1889

Art. 1, Sect. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall be forever guaranteed in this State, and no person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of this State.

Art. 8, Sect. 147. A high degree of intelligence, patriotism, morality, and integrity on the part of every voter in a government by the people being necessary to insure the continuance of that government and the prosperity and happiness of the people, the legislative Assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all the children of the State of North Dakota and free from sectarian control. This legislation shall be irrevocable without the consent of the United States and the people of North Dakota.

Sect. 152. All colleges, universities, and other educational institutions for the support of which lands have been granted to this State, or which are supported by a public tax, shall remain under the absolute and exclusive control of the State. No money raised for the support of the public schools of the State, shall be appropriated to or used for the support of any sectarian school.

South Dakota—1889

Art. 6, Sect. 3. The right to worship God according to the dictates of conscience shall never be infringed.

No person shall be denied any civil or political right, privilege or position on account of his religious opinions; but the liberty of conscience hereby secured shall not be so construed as to excuse licentiousness, invasion of the rights of others, or justify practices inconsistent with the peace or safety of the State. No person shall be compelled to attend or support any place of worship or ministry against his consent, nor shall any preference be given by law to any religious establishment or mode of worship. No money or property of the State shall be given or appropriated for the benefit of any sectarian or religious society or institution.

Art. 8, Sect. 16. No appropriation of lands, money or other property or credits to aid any sectarian school shall ever be made by the State, or any municipality, or any county within the State, nor shall the State, nor any any county, or municipality within the State accept any grant, conveyance, gift, or bequest of lands. money, or other property to be used for sectarian purposes, and no sectarian instruction shall be allowed in any school or institution supported or aided by the State.

Washington—1889

Art. 1, Sect. 11. Absolute freedom of conscience in all matters of religious sentiment, belief, and worship shall be guaranteed to every individual and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or to justify practices inconsistent with the peace and safety of the State. No public money or property shall be appropriated for

or applied to any religious worship, exercise, or instruction, or support of any religious establishment: Provided, however, that this article shall not be so construed as to forbid the employment by the State of a Chaplain for the State Penitentiary and for such of the State Reformatories as in the discretion of the Legislature may seem justified. No religious qualifications shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.

Art. 9, Sect. 4. All schools maintained and supported wholly or in part by the public funds shall be forever free from sectarian control and influence.

Wyoming—1889

Art. 1, Sect. 18. The free exercise and enjoyment of religious profession and worship without discrimination or preference shall be forever guaranteed in this State, and no person shall be rendered incompetent to hold any office of trust or profit, or to serve as a witness or juror, because of his opinion on any matter of religion whatever, but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the State.

Sect. 19. No money of the State shall ever be given or appropriated to any sectarian or religious society or institution.

Art. 7, Sect. 12. No sectarian instruction, qualifications or tests shall be imposed, exacted, applied or in

any manner tolerated in any schools of any grade or character controlled by the State, nor shall attendance be required at any religious service therein, nor shall any sectarian tenets or doctrines be taught or favored in any public school or institution that may be established under this constitution.

Idaho—1890

Art. 1, Sect. 4. The exercise and enjoyment of religious faith and worship shall forever be guaranteed; and no person shall be denied any civil or political right, privilege, or capacity, on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths of affirmations, or excuse acts of licentiousness or justify polygamous or other pernicious practices inconsistent with morality, or the peace or safety of the State; nor to permit any person, organization, or association to directly or indirectly aid or abet, counsel or advise any person to commit the crime of bigamy or polygamy or any other crime. No person shall be required to attend or support any ministry or place of worship, religious sect or denomination, or pay tithes against his consent; nor shall any preference be given by law to any religious denomination or mode of worship. Bigamy and polygamy are forever prohibited in the State, and the legislature shall provide by law for the punishment of such crimes.

Art. 9, Sect. 5. Neither the legislature, nor any county, city, town, township school district, or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian, or re-

ligious society, or for any sectarian or religious purpose, or to help sustain any school, academy, seminary, college, university, or other literary or scientific institution controlled by any church, sectarian or religious denomination whatsoever; nor shall any grant or donation of land, money, or other property ever be made by the State or any such public corporation, to any church or for any sectarian or religious purpose. Sect. 6. No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the State either as a teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatever. No sectarian or religious tenets or doctrines shall ever be taught in the public schools, nor shall any classification or distinction of pupils be made on account of race or color. No books, papers, tracts or documents of a political, denominational or sectarian character shall be used or introduced in any schools established under the provisions of this article, nor shall any teacher or any district receive any of the public school monies in which the schools have not been taught in accordance with the provisions of this article.

Mississippi—1890

Art. 3, Sect. 18. No religious test as a qualification for office shall be required; and no preference shall be given by law to any religious sect, or mode of worship; but the free enjoyment of all religious sentiments and the different modes of worship shall be held sacred. The rights hereby secured shall not be construed to

justify acts of licentiousness injurious to morals or dangerous to the peace and safety of the State; or to exclude the Holy Bible from use in any public school of the State.

Art. 8, Sect. 208. No religious or other sect, or sects, shall ever control any part of the school or other educational funds of this State, nor shall any funds be appropriated toward the support of any sectarian school; or to any school that at the time of receiving such appropriation was not conducted as a free school.

Kentucky—1891

Bill of Rights. Sect. 2. "The right of worshipping Almighty God according to the dictates of their consciences," declared among inalienable rights.

Sect. 5. No preference shall ever be given by law to any religious sect, society, or denomination; nor to any particular creed, mode of worship, or system of ecclesiastical policy; nor shall any person be compelled to attend any place of worship, to contribute to the erection or maintenance of any such place, or to the salary or support of any minister of religion; nor shall any man be compelled to send his child to any school to which he may be conscientiously opposed; and the civil rights, privileges, or capacities of no person shall be taken away, or in any wise diminished or enlarged, on account of his belief or disbelief of any religious tenet, dogma or teaching. No human authority shall, in any case whatever, control or interfere with the rights of conscience.

EDUCATION: Sect. 189. No portion of any fund or tax now existing, or that may hereafter be raised or levied for educational purposes, shall be appropri-

ated to, by or in aid of, any church, denominational or sectarian school.

New York—1894

Art. 1, Sect. 3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

Art. 9, Sect. 4. Neither the State nor any subdivision thereof, shall use its property, or credit, or any public money, to authorize or permit, either to be used directly or indirectly, in aid or maintenance, other than for examination and inspection, of any school or institution of learning wholly or in part under the control and direction of any religious denomination, or in which any denominational doctrine or tenet is taught.

South Carolina—1895

Art. 1, Sect. 4. The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or of the right of the people peaceably to assemble and to petition the government or any department thereof for a redress of grievances.

Art. 11, Sect. 9. The property or credit of the State of South Carolina, or of any county, city, town township, school district, or other subdivision of the of the said State, or any public money, from whatever source derived, shall not, by gift, donation, loan, contract, appropriation, or otherwise, be used directly or indirectly in aid or for the maintenance of any college, school, hospital, orphan house, or other institution, society, or organization of whatever kind which is wholly or in part under the direction and control of any church or of any religious or sectarian denomination, society or organization.

Utah—1895

Art. 1, Sect. 4. The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror, on account of religious belief or the absence thereof. There shall be no union of church and State, nor shall any church dominate the State and interfere with its functions. No public money shall be appropriated for or applied to any religious worship, exercise, or instruction, or for the support of any ecclestiastical establishment. No property qualification shall be required of any person to vote or hold office, except as provided in this Constitution.

Art. 10, Sect. 1. The legislature shall provide for the establishment of and maintenance of a uniform system of public schools, which shall be open to all

children of the State and free from sectarian control

Sect. 12. Neither religious nor partisan test or qualification shall be required of any person as a condition of admission as teacher or student, into any public educational institution of this State.

Sect. 13. Neither the legislature, nor any county, city, town, township or school district or other public corporation, shall make any appropriation to aid in the support of any school, seminary, academy, college, university, or other institution controlled in whole or in part, by any church, sect, or denomination whatever.

Delaware—1897

Art. 1, Sect. 1. Although it is the duty of men frequently to assemble together for the worship of Almighty God; and piety and morality, on which the prosperity of the community depends, are hereby promoted; yet no man shall or ought to be compelled to attend any religious worship, to contribute to the erection or support of any place of worship, or to the maintenance of any ministry against his own free will and consent; and no power ought to be vested in or assumed by any magistrate that shall in any case interfere with, or in any manner control the rights of conscience, in the free exercise of religious worship, nor a preference given by law to any religious societies, denominations, or modes of worship.

Sect. 2. No religious test shall be required as a qualification to any office, or public trust under this State.

Art. 10, Sect. 3. No portion of any fund now existing, or which may hereafter be appropriated, or raised

by tax for educational purposes, shall be appropriated to, or used by, or in aid of any sectarian, church or denominational school; provided that all real or personal property used for school purposes, where the tuition is free, shall be free from taxation and assessment for public purposes.

Alabama—1901

Art. 1, Sect. 3. That no religion shall be established by law; that no preference shall be given by law to any sect, society, denomination, or mode of worship; that no one shall be compelled by law to attend any place of worship; nor to pay any tithes, taxes, or other rates for building or repairing any place of worship, or for maintaining any ministry or minister; that no religious test shall be required as a qualification for any office or public trust under this State; and that the civil rights, privileges, and capacities of any citizen shall not be in any manner affected by his religious principles.

Art. 14, Sect. 263. No money raised for the support of the public schools shall be appropriated to or used for the support of any sectarian or denominational schools.

Virginia—1902

Art. 1, Sect. 16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian

forbearance, love and charity towards each other.

Art. 10, Sect. 141 No appropriation of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the State or some political subdivision thereof; provided first, that the General Assembly may, in its discretion, continue the appropriations to the College of William and Mary; second, that this section shall not be construed as requiring or prohibiting the continuance of the payment of interest on certain bonds held by certain schools and colleges as provided by an act of the General Assembly, approved February twenty-third, eighteen hundred and ninety-two, relating to bonds held by schools and colleges; third, that counties, cities, town, and districts may make appropriations to non-sectarian schools of manual, industrial, and technical training, and also to any institution of learning owned or exclusively controlled by such county, city, town or school district.

Oklahoma—1907

Art. 1, Sect. 2. Perfect toleration of religious sentiment shall be secured, and no inhabitant of the State shall ever be molested in person or property on account of his or her mode of religious worship; and no religious test shall be required for the exercise of civil or political rights. Polygamous or plural marriages are forever prohibited.

Art. 2, Sect. 5. No public money or property shall ever be appropriated, or applied, donated, used directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit or support of any priest,

minister, or other religious dignitary or teacher, or sectarian institution as such.

Michigan—1908

Art. 1, Sect. 3. Every person shall be at liberty to worship God according to the dictates of his own conscience. No person shall be compelled to attend, or, against his consent, to contribute toward the erection or support of any place of religious worship, or to pay tithes, taxes, or other rates for the support of any minister of the gospel or teacher of religion. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the State be appropriated for such purpose. The civil and political rights, privileges, and capacities of no person shall be diminished or enlarged on account of his religious belief.

Art. II, Sect. 1. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and means of education shall forever be encouraged.

Arizona—1912

Art. 2, Sect. 12. The liberty of concience secured by the provisions of this constitution shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State. No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment. No religious qualification shall be required for any public office or employment,

nor shall any person be incompetent as witness or juror in consequence of his opinion on matters of religion, nor be questioned touching his religous belief in any court of justice to affect the weight of his testimony.

Art. 9, Sect. 10. No tax shall be laid or appropriation of public money made in aid of any church, or private or sectarian school, or any public service corporation.

Art. 11, Sect. 7. No sectarian instruction shall be imparted in any school or State educational institution that may be established under this constitution, and no religious or political test or qualification shall be required as a condition of admission into any public educational institution of this State, as teacher, student, or pupil; but the liberty of conscience hereby secured shall not be so construed as to justify practices or conduct inconsistent with the good order, peace, morality, or safety of the State, or with the rights of others.

New Hampshire—1912

Bill of Rights, Art. 6. As morality and piety rightly grounded on evangelical principles, will give the best and greatest security to government, and will lay in the hearts of men the strongest obligations to due subjection, and as a knowledge of these is most likely to be propagated through a society by the institution of public worship of the Deity, and of public instruction in morality and religion, therefore, to promote these important purposes, the people of this State have a right to empower, and do empower, the legislature to authorize from time to time,

the several towns, parishes, bodies corporate, or religious societies within the State to make adequate provision at their own expense, for the support and maintenance of public Protestant teachers of piety, religion, and morality. Provided, notwithstanding, that the several towns, parishes, bodies corporate or religious societies, shall at all times have the exclusive right of electing their own public teachers and of contracting with them for their support and maintenance. And no person of any one particular sect or denomination shall ever be compelled to pay towards the support of the teacher, or teachers of another persuasion, sect or denomination. And every denomination of Christians demeaning themselves quietly and as good subjects of the State, shall be equally under the protection of the law; and no subordination of any sect or denomination to another shall ever be established by law. And nothing herein shall be understood to affect any former contracts made for the support of the ministry; but all such contracts shall remain and be in the same state as if this constitution had not been made.

Part Second, Art. 82. Knowledge and learning generally diffused through a community, being essential to the preservation of a free government, and spreading the opportunities and advantages of education through the various parts of the country being highly conducive to promote this end, it shall be the duty of legislators and magistrates, in all future periods of this government, to cherish the interests of literature and the sciences, and all seminaries and public schools; to encourage private and public institutions, rewards and immunities for the promotion of agriculture, arts, sciences, commerce, trades, man-

ufacturers, and natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections and generous sentiments among the people; provided, nevertheless, that no money raised by taxation shall ever be granted or applied for the use of the schools or institutions of any religious sect or denomination.

The above was modelled from much earlier constitutions.

New Mexico—1912

Art. 2, Sect. 11. Every man shall be free to worship God according to the dictates of his own conscience and no person shall ever be molested or denied any right, civil or political, or privilege on account of his religious opinion or mode of religious worship. No person shall be required to attend any place of worship or support any religious sect or denomination; nor shall any preference be given by law to any religious denomination or mode of worship.

Art 12, Sect. 3. The schools, colleges, universities, and other educational institutions provided under this constitution shall forever remain under the exclusive control of the State, and no part of the proceeds arising from the sale or disposal of any lands granted by Congress to the State, or any other funds, appropriated, levied, or collected for educational purposes shall be used for the support of any sectarian, denominational, or private school, college, or university.

Sect. 9. No religious test shall ever be required as a condition for admission into the public schools or educational institutions of the State, either as a

teacher or student, and no teacher or student of such school or institution shall be required to attend or participate in any religious service whatever.

Louisiana—1913

Bill of Rights, Sect. 4. Every person has the natural right to worship God according to the dictates of his own conscience, and no law shall be passed respecting an establishment of religion.

Public Education, Art. 253. No funds raised for the support of the public schools of the State shall be appropriated to or used for the support of any private or sectarian schools.

(*Besides the provisions already quoted from the various State Constitutions, most of the State Constitutions also contain provisions exempting churches and church property from taxation.*)

IV

EXCERPTS FROM EARLY LEADERS

In this chapter I am quoting from the addresses or writings of some of our early leaders of public opinion in this country expressly the parts showing their religious opinions and convictions. Since those quoted were all influential leaders of public opinion, these have a bearing upon our study as showing their personal thought and convictions which they tried to have expressed in the Constitution and other laws of the land.

BENJAMIN FRANKLIN'S ADDRESS TO DELEGATES OF THE CONVENTION

When after five weeks of futile discussion among the delegates the convention itself seemed about to break up, Franklin arose and said: "Mr. President, I perceive that we are not in condition to pursue this business any longer. Our blood is too hot. We indeed seem to feel our own want of political wisdom, since we have been running about in search of it. We have gone back to ancient history for models of government and examined the different forms of those republics which, having been formed with the seeds of their own dissolution now no longer exist. In this situation of this assembly, groping as it were in the dark, to find political truth, and scarcely able to distinguish it when presented to us, how has it happened, sir, that we have not hitherto once thought of humbly applying

to the Father of lights to illuminate our understandings? In the beginning of the contest with Great Britain, when we were sensible to danger, we had daily prayer in this room for divine protection. Our prayers, sir, were heard; and they were graciously answered. All of us who were engaged in the struggle must have observed frequent instances of a superintending Providence in our favor.

"To that kind Providence we owe this happy opportunity of consulting, in peace, on the means of establishing our future national felicity; and have we now forgotten that powerful Friend? Or do we imagine we no longer need his assistance? I have lived, sir, a long time; and the longer I live the more convincing proofs I see of this truth, that God governs in the affairs of men. If a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid?

"We have been assured, sir, in the sacred writings, that 'except the Lord build the house, they labor in vain that build it.' I firmly believe this; and I also believe that without his concurring aid we shall succeed in this political building no better than the builders of Babel. We shall be divided by our little partial local interests; our projects will be confounded and we ourselves shall become a reproach and a byword down to future ages; and, what is worse, mankind may hereafter from this unfortunate instance despair of establishing governments by human wisdom, and leave it to chance, war, and conquest.

"I, therefore, move you, sir, that we separate for three days, during which time in a conciliatory spirit we talk with both parties; for if ever we make a constitution it must be the work of compromise; and while

I am upon my feet I move you, sir, and I am astonished that it has not been done before, for when we signed the Declaration of Independence we had a chaplain to read the Bible and pray; and I move now that when we meet again we have a chaplain to meet with us each morning before we proceed to business, and that we have prayers imploring the assistance of Heaven and its blessings upon our deliberations."

GEORGE WASHINGTON'S FAREWELL ADDRESS, SEPTEMBER 17, 1796

"Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens. The mere politician equally with the pious man ought to respect and cherish them. A volume could not trace all their connection with public felicity. Let it simply be asked where is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths which are the instruments of investigation in courts of justice? And let us with caution indulge the supposition, that morality can be maintained without religion. Whatever may be conceded to the influence of refined education upon minds of peculiar structure, reason and experience both forbid us to expect, that national morality can prevail in exclusion of religious principle. It is substantially true that virtue or morality is a necessary spring of popular government. The rule indeed extends with more or less force to every species of free government. Who that is a sin-

cere friend to it can look with indifference upon attempts to shake the foundation of the fabric?"

OPINIONS OF THOMAS JEFFERSON

Although Jefferson was serving as Ambassador to France during the period of Constitutional Convention he must be numbered among the influential leaders of that period. He was the author of The Declaration of Independence, one of the foremost citizens of the land, and carried on a voluminous correspondence with other leaders of that period. Conditions of that period are well indicated in his Notes on Virginia in which he describes the religious situation as follows: "The first settlers were immigrants from England of the English Church, just at a point of time when it was flushed with complete victory over the religions of other persuasions. Possessed as they became, of the powers of making, administering and executing the laws, they showed equal intolerance in this country with the Presbyterian brethren who had emigrated to the northern government. The poor Quakers were flying from persecution in England. They cast their eyes on these new countries as asylums of civil and religious freedom, but they found them free only for the reigning sect. Several acts of the Virginia Assembly, 1659, 1662, and 1693 had made it penal for parents to refuse to have their children baptised; had prohibited as unlawful the assemblying of Quakers; had made it penal for any master of a vessel to bring a Quaker into the state; had ordered those already here and such as should come thereafter, to be imprisoned until they should abjure the country; provided a milder punishment for

their first and second return, but death for their third; had inhibited all persons from suffering their meetings in or near their houses, entering them individually, or disposing of books which supported their tenets."

Jefferson's own opinion of this bigotry is expressed as follows: "The rights of conscience we never submitted. We are answerable for them to our God. The legitimate powers of government extend to such acts as are injurious to others. But it does me no injury for my neighbor to say there are twenty Gods or no God. It neither picks my pockets nor breaks my leg. If it can be said his testimony in a court of justice cannot be relied upon, reject it then, and be the stigma upon him. Constraint may make him worse by making him a hypocrite, but it will never make him a truer man. It may fix him obstinately in his errors but will not cure them. Reason and free inquiry are the only effectual agents against error. It is error alone which needs the support of government. Truth can stand by itself."

The Bill for Religious Freedom enacted by Virginia in 1768 while Jefferson was Ambassador to France is, however, the culmination of his efforts and the embodiment of his thinking and influence. It is as follows:

"We, the General Assembly of Virginia, do enact, that no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body of goods, nor shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain their opinions in matters of reli-

gion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities. And though we well know that this Assembly, elected by the people for the purposes of legislation only, have no power to restrain the acts of succeeding Assemblies, constituted with powers equal to our own, and that, therefore, to declare this act irrevocable would be of no effect in law, yet we are free to declare, and do declare, that the rights hereby asserted, are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right."

Since the Virginia Plan formulated by James Madison became the basis of our National Constitution together with the first ten amendments also introduced by him in the first Congress after ratification by the States, it is quite proper that we close this section with quotations from him. Since his personal opinions are best reflected in his Memorial and Remonstrance against Religious Assessments and this also has been referred to in the Supreme Court Decision in the Champaign Case we quote entirely from his Remonstrance and in sufficient detail to give an accurate index of his thinking by following somewhat in detail his salient arguments. A brief study of these, however, shows that his protest was directed against the State of Virginia using its civil powers to tax its citizens for the support of religious teachers which act was favored by some denominations within that State but opposed by others. He felt that this was an usurpation of authority by the General Assembly making them actually arbiters in the realm of religion by assuming the power to tax in its support, thus it

would prove a devisive influence within the State in the aid it might afford certain denominations in teaching undergirded by State revenues and thus exert a public pressure which might undermine the individual liberties guaranteed by the Constitution. It is difficult to see wherein his logic or remonstrance would apply to the Champaign Case wherein the instruction was entirely elective and supported entirely without aid from the public treasury or school funds. From the quotations given the reader may judge as to the accuracy of this judgment.

QUOTATIONS FROM MADISON'S REMONSTRANCE

"We remonstrate against said bill

1. Because we hold it a fundamental and undeniable truth, that religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence. The religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to Him. This duty is precedent both in order of time and degree of obligation to the claims of civil society.

2. Because if religion be exempt from the authority of the Society at large still less can it be subject to the Legislative Body. The latter are but the creatures and vicegerents of the former.

3. Because it is proper to take alarm at the first experiment on our liberties. The same authority

which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever.

4. Because the bill violates the equality which ought to be the basis of every law. Whilst we assert for ourselves a freedom to embrace, to profess and to observe the religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. The bill violates equality by subjecting some to peculiar burdens; so it violates the same principle by granting to others peculiar exemptions.

5. Because the bill implies that the Civil Magistrate is a competent judge of religious truth; or that he may employ religion as a matter of civil policy.

6. Because the establishment proposed by the bill is not requisite for the support of the Christian religion.

7. Because experience witnesseth that ecclesiastical establishments instead of maintaining the purity and efficiency of religion have had a contrary operation.

8. Because the establishment in question is not necessary for the support of civil government.

9. Because the proposed establishment is a departure from that generous policy, which offering an asylum to the persecuted and oppressed of every nation and religion, promised a lustre to our country.

10. Because it will destroy that moderation and harmony which the forbearance of our laws to intermeddle with religion has produced among its several sects.

11. Because attempts to enforce by legal sanctions, acts obnoxious to so great a proportion of citizens,

tends to inervate the laws in general, and to slacken the bands of society.

12. Because a measure of such singular magnitude and delicacy ought not to be imposed without the clearest evidence that it is called for by a majority of citizens: and no satisfactory method is yet proposed by which the voice of the majority in this case may be determined, or its influence secured.

13. Because, finally, "the equal right of every citizen to the free exercise of his religion according to the dictates of conscience," is held by the same tenure as our other rights. Either then, we must say, that the will of the legislature is the only measure of their authority; or that in the plenitude of this authority, they may sweep away all our fundamental rights. We, the subscribers say, that the General Assembly of this Commonwealth has no such authority; and that no effort may be omitted on our part against so dangerous an usurpation: we oppose to it this remonstrance, earnestly praying, as we are in duty bound, that the Supreme Lawgiver of the Universe, by illuminating those to whom it is addressed, may on the one hand turn their councils from every act which would affront his Holy prerogative, or violate the trust committed to them; and on the other, guide them into every measure which may be worthy of His blessing, may redound to their own praise, and may establish more firmly the liberties, the prosperity and the happiness of the Commonwealth.

V

A BRIEF HISTORY OF EDUCATION IN THE UNITED STATES

Civilization has been declared to be a race between education and catastrophe. In the scope of this chapter we attempt only a brief history of educational emphasis and effort within our nation especially stressing those facts which have bearing upon our study of the effort of our citizens to build their educational system within the scope and according to the principles enunciated within our National Constitution.

Early educational effort within the nation was primarily religious in content and origin although somewhat diverse in method and agency as attempted within the various states. Our ancestors were of European background and they most naturally introduced in the new country the types of institutions and emphasis with which they were most familiar. Outside of Maryland the colonists were Protestant in faith and their emphasis exhibited the characteristics of that faith. In essence the Protestant Reformation marked a revolt against the authority of the Catholic Church as represented by the Pope and an emphasis upon the authority of the Bible itself with the right of each worshipper to read the Word of God and interpret it according to the light of his own conscience as illuminated by the Holy Spirit. Accordingly the individual Protestant must be educated to read the Word in order to gain the truth essential to his salva-

tion. Thus the Bible and the Catechism of the Church were the main textbooks in early efforts at education. This was everywhere true. Protestant New England with its Calvinist Puritan background led the way and in the efforts and advance indicated within the State of Massachusets furnishes the prototype of our present American system. For the beginners there were Dame Schools taught by some woman usually within her own home where instruction in reading and the rudiments of education were stressed usually for a small pittance. Education was under and mainly furnished through the instrumentality of the church, although private schools were early organized. Besides the Dame Schools there were Latin Schools where Greek was also sometimes taught preparing those enrolled for college and at the head of the system was Harvard College chartered for the purpose of providing an educated clergy.

In the middle Atlantic States the population was more diverse both in racial origin and religious belief. New York had been settled by Calvinist Dutch and the Walloons, Pennsylvania by Quakers with many other sects within its borders such as German Lutherans, Mennonites, Dunkers, Methodists, Baptists, with the Swedish Lutherans settling along the banks of the Delaware, while New Jersey was settled by Scotch-Irish Presbyterians. Here also the emphasis was religious and the schools mainly of parochial and private character.

In the southern states education was again religious although of somewhat different type. Virginia has been settled mainly by Anglicans with dissenters of the Scottish-Irish Presbyterian faith in the western sections of the state, Maryland by Catholics and

Anglicans, while French Huguenots had settled along the coastal sections of the Carolinas. Here again was a complexity of religious beliefs but schooling was most influenced by economic facts in the development of the southland. While the early colonies were all agricultural in type, development in the south owing to the fact of climate together with slavery and "indentured" white labor led to the development of large estates or plantations. The owners of these plantations usually employed private tutors for the educating of their children or sent them aboard. The children of the poor as far as they received education were cared for mainly in parochial or pauper schools established through private philanthropy.

Educational effort throughout the land slowed down during the Revolutionary War as it did later during the Civil War. Only six cities of eight thousand or over population existed by the year 1800. Our economy was agricultural and the education afforded through apprenticeship on the farm or through pioneering and clearing the wilderness for homesites seemed most essential for the gaining of a livelihood. Accordingly there was little incentive for expanding early education beyond instruction in reading, writing and arithmetic. Only as cities multiplied and manufacturing plants developed did there arise a demand for a broader course of instruction suited to the newer developments. The need now led to a more thorough instruction in the courses already taught with additional courses in history, geography and vocational courses suited to the manufacturing developments. The expenses of the war had left the colonists poor and impoverished with little inclination to bear taxes for educational effort. Early education had been

provided through church and private effort, augmented by lotteries, fees from marriage licenses, and taxes upon banks and liquors with state and national grants of land to provide schoolhouses. These revenues had been supplemented by fees for instruction or by parents providing wood for the schoolhouse or boarding the teacher at intervals.

The struggle for tax-supported schools open to all was a long struggle against selfishness, vested interests, ignorance and suspicion. It was waged throughout the land during the first half of the nineteenth century. In the effort to gain public support for free schools, organizations of interested citizens were effected, campaigns conducted, periodicals and literature prepared and distributed in large quantities and after years of untiring effort amid many discouragements public approval of free tax-supported schools was won by 1875. Again New England led the way and under the conspicuous leadership of Horace Mann in Massachusetts and Henry Barnard in Rhode Island and Connecticut, sentiment became gradually crystallized in the New England States and later throughout the nation. In 1642 Massachusetts enacted the first law within the nation providing that town officials investigate whether parents or masters were attending to the education of their children in matters pertaining to labor and employment profitable to the commonwealth and if they were being taught to read and understand the principles of religion and the capital laws of the land. This action was followed by another law in 1647 providing that every town of fifty householders should at once appoint a teacher of reading and writing, and provide for his wages; and that every town of 100 householders must provide a

Latin Grammar School to fit youths for the university with a penalty of five pounds for failure to do so. Thus here was laid the foundation of direct taxation for purposes of general education with compulsory provisions for its enforcement upon the basis of the promotion of the welfare of the state as one of the main reasons for its enactment. But the acceptance of this principle throughout the nation was most gradual and then only after repeated campaigns of education to win public approval. Early acceptance of the necessity for a more general educational opportunity than was offered by existing agencies led to the subsidizing of both church and private schools to enable them to expand their facilities and usefulness. As the courses of instruction broadened and with increased enrollment of pupils it became gradually recognized that the churches and private schools were not adequate to the task and gradually school districts were formed where public opinion favored taxation for school support. These school districts and towns where workingmen were demanding the rights of education for their children without the stigma of sending them to a pauper school led to an increase of free schools. Matters were entirely optional with the local communities involved and only as these communities increased did the demand for supervision and uniformity of instruction lead to state supervision of those existing and later to a matter of compulsory legislation providing for the general establishment of schools throughout the various states. Under the growing realization of the importance of education for guaranteeing and promoting the welfare of the state and nation and with the slogan that the funds of the state must be used for educating the children of

of the state, public opinion was gradually marshalled in behalf of our tax-supported public school system.

With growing legislation in practically every state making it compulsory for the state to provide schools and for parents to send their children, owing to the diversity of religious faiths involved in our citizenry there arose the demand for refusing permission for any sectarian instruction in our public schools or the use of any public funds by appropriation to the religious work or effort of any particular sect or denomination. Thus the separation of any sectarian emphasis in our public school system grew not out of the organized effort of any religious group or opposed citizen, but through a sincere effort by educators and school authorities to provide the means of free education for the youth of America free from the religious compulsion of any sect or denomination thereby guaranteeing the religious liberties and freedoms established under our constitution.

VI

THE SUPREME COURT DECISION IN THE CHAMPAIGN CASE

McCOLLUM v. BOARD OF EDUCATION SUPREME COURT OF THE UNITED STATES

No. 90.—October Term, 1947.

People of the State of Illinois ex rel. Vashti McCollum, Appellant,

v.

Board of Education of School District No. 71, Champaign County, Illinois et al.

Appeal from the Supreme Court of the State of Illinois.

[March 8, 1948.]

Mr. Justice Black delivered the opinion of the Court.

This case relates to the power of a state to utilize its tax-supported public school system in aid of religious instruction insofar as that power may be restricted by the First and Fourteenth Amendments to the Federal Constitution.

The appellant, Vashti McCollum, began this action for mandamus against the Champaign Board of Education in the Circuit Court of Champaign County,

Illinois. Her asserted interest was that of a resident and taxpayer of Champaign and of a parent whose child was then enrolled in the Champaign public schools. Illinois has a compulsory education law which, with exceptions, requires parents to send their children, aged seven to sixteen, to its tax-supported public schools where the children are to remain in attendance during the hours when the schools are regularly in session. Parents who violate this law commit a misdemeanor punishable by fine unless the children attend private or parochial schools which meet educational standards fixed by the State. District boards of education are given general supervisory powers over the use of the public school buildings within the school districts. Ill. Rev. Stat. ch. 122, §§ 123, 301 (1943).

Appellant's petition for mandamus alleged that religious teachers, employed by private religious groups, were permitted to come weekly into the school buildings during the regular hours set apart for secular teaching, and then and there for a period of thirty minutes substitute their religious teaching for the secular education provided under the compulsory education law. The petitioner charged that this joint public-school religious-group program violated the First and Fourteenth Amendments to the United States Constitution. The prayer of her petition was that the Board of Education be ordered to "adopt and enforce rules and regulations prohibiting all instruction in and teaching of all religious education in all public schools in Champaign District Number 71, . . . and in all public school houses and buildings in said district when occupied by public schools."

The board first moved to dismiss the petition on the ground that under Illinois law appellant had no stand-

ing to maintain the action. This motion was denied. An answer was then filed, which admitted that regular weekly religious instruction was given during school hours to those pupils whose parents consented and that those pupils were released temporarily from their regular secular classes for the limited purpose of attending the religious classes. The answer denied that this coordinated program of religious instruction violated the State or Federal Constitution. Much evidence was heard, findings of fact were made, after which the petition for mandamus was denied on the ground that the school's religious instruction program violated neither the federal nor state constitutional provisions invoked by the appellant. On appeal the State Supreme Court affirmed. 396 Ill. 14. Appellant appealed to this Court under 28 U. S. C. § 344 (a), and we noted probable jurisdiction. 332 U.S.—.

The appellee presses a motion to dismiss the appeal on several grounds, the first of which is that the judgment of the State Supreme Court does not draw in question the "validity of a statute of any State" as required by 28 U. S. C. § 344 (a). This contention rests on the admitted fact that the challenged program of religious instruction was not expressly authorized by statute. But the State Supreme Court has sustained the validity of the program on the ground that the Illinois statutes granted the board authority to establish such a program. This holding is sufficient to show that the validity of an Illinois statute was drawn in question within the meaning of 28 U. S. C. § 344 (a). *Hamilton* v. *Regents of U. of Cal.*, 293 U. S. 245, 258. A second ground for the motion to dismiss is that the appellant lacks standing to maintain the action, a ground which is also without merit. *Coleman* v. *Miller*, 307 U. S. 433,

443, 445, 464. A third ground for the motion is that the appellant failed properly to present in the State Supreme Court her challenge that the state program violated the Federal Constitution. But in view of the express rulings of both state courts on this question, the argument cannot be successfully maintained. The motion to dismiss the appeal is denied.

Although there are disputes between the parties as to various inferences that may or may not properly be drawn from the evidence concerning the religious program, the following facts are shown by the record without dispute.[1] In 1940 interested members of the Jewish, Roman Catholic, and a few of the Protestant faiths formed a voluntary association called the Champaign Council on Religious Education. They obtained permission from the Board of Education to offer classes in religious instruction to public school pupils in grades four to nine inclusive. Classes were made up of pupils whose parents signed printed cards requesting that

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[1]Appellant, taking issue with the facts found by the Illinois courts, argues that the religious education program in question is invalid under the Federal Constitution for any one of the following reasons: (1) In actual practice certain Protestant groups have obtained an overshadowing advantage in the propagation of their faiths over other Protestant sects; (2) the religious education program was voluntary in name only because in fact subtle pressures were brought to bear on the students to force them to participate in it; and (3) the power given the school superintendent to reject teachers selected by religious groups and the power given the local Council on Religious Education to determine which religious faiths should participate in the program was a prior censorship of religion.

In view of our decision we find it unnecessary to consider these arguments or the disputed facts upon which they depend.

their children be permitted to attend;[2] they were held weekly, thirty minutes for the lower grades, forty-five minutes for the higher. The council employed the religious teachers at no expense to the school authorities, but the instructors were subject to the approval and supervision of the superintendent of schools.[3] The

[2]The Supreme Court described the request card system as follows: ". . . Admission to the classes was to be allowed only upon the express written request of parents, and then only to classes designated by the parents . . . Cards were distributed to the parents of elementary students by the public-school teachers requesting them to indicate whether they desired their children to receive religious education. After being filled out, the cards were returned to the teachers or the children . . ." On this subject the trial court found that ". . . those students who have obtained the written consent of their parents therefor are released by the school authorities from their secular work, and in the grade schools for a period of thirty minutes' instruction in each week during said school hours, and forty-five minutes during each week in the junior high school, receive training in religious education . . . Certain cards are used for obtaining permission of parents for their children to take said religious instruction courses, and they are made available through the offices of the superintendent of schools and through the hands of principals and teachers to the pupils of the school district. Said cards are prepared at the cost of the council of religious education. The handling and distribution of said cards does not interfere with the duties or suspend the regular secular work of the employees of the defendant . . ."

[3]The State Supreme Court said: "The record further discloses that the teachers conducting the religious classes were not teachers in the public schools but were subject to the approval and supervision of the superintendent . . ." The trial court found: "Before any faith or other group may obtain permission from the defendant for the similar, free and equal use of rooms in the public school buildings said faith or group must make application to the superintendent of schools of said School District Number 71, who in turn will determine whether or not it is practical for said group to teach in said school system." The

classes were taught in three separate religious groups by Protestant teachers,[4] Catholic priests, and a Jewish rabbi, although for the past several years there have apparently been no classes instructed in the Jewish religion. Classes were conducted in the regular classrooms of the school building. Students who did not choose to take the religious instruction were not released from public school duties; they were required to leave their classrooms and go to some other place in the school building for pursuit of their secular studies. On the other hand, students who were released from secular study for the religious instructions were required to be present at the religious classes. Reports of their presence or absence were to be made to their secular teachers.[5]

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president of the local school board testified: ". . . The Protestants would have one group and the Catholics, and would be given a room where they would have the class and we would go along with the plan of the religious people. They were all to be treated alike, with the understanding that the teachers they would bring into the school were approved by the superintendent . . . The superintendent was the last word so far as the individual was concerned . . ."

[4]There were two teachers of the Protestant faith. One was a Presbyterian and had been a foreign missionary for that church. The second testified as follows: "I am affiliated with the Christian church. I also work in the Methodist Church and I taught at the Presbyterian. I am married to a Lutheran."

[5]The director of the Champaign Council on Religious Education testified: ". . . If any pupil is absent we turn in a slip just like any teacher would to the superintendent's office. The slip is a piece of paper with a number of hours in the school day and a square, and the teacher of the particular room for the particular hour records the absentees. It has their names and the grade and the section to which they belong. It is the same sheet that the geography and history teachers and all the other teachers use, and is furnished by the school . . ."

The foregoing facts, without reference to others that appear in the record, show the use of tax-supported property for religious instruction and the close cooperation between the school authorities and the religious council in promoting religious education. The operation of the state's compulsory education system thus assists and is integrated with the program of religious instruction carried on by separate religious sects. Pupils compelled by law to go to school for secular education are released in part from their legal duty upon the condition that they attend the religious classes. This is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith. And it falls squarely under the ban of the First Amendment (made applicable to the States by the Fourteenth) as we interpreted it in *Everson* v. *Board of Education*, 330 U. S. 1. There we said: "Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.[6] Neither can force or influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining

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[6]The dissent, agreed to by four judges, said: "The problem then cannot be cast in terms of legal discrimination or its absence. This would be true, even though the state in giving aid should treat all religious instruction alike . . . Again, it was the furnishing of 'contributions of money for the propagation of opinions which he disbelieves' that the fathers outlawed. That consequence and effect are not removed by multiplying to all-inclusiveness the sects for which support is exacted. The Constitution requires, not comprehensive identification of state with religion, but complete separation." *Emerson* v. *Board of Education*, 330 U.S. 1, 59, 60.

or for professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.[7] Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups, and *vice versa*. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State.' " *Id.* at 15-16. The majority in the *Everson* case, and the minority as shown by quotations from the dissenting views in our notes 6 and 7, agreed that the First Amendment's language, properly interpreted, had erected a wall of separation between Church and State. They disagreed as to the facts shown by the record and as to the proper application of the First Amendment's language to those facts.

Recognizing that the Illinois program is barred by the First and Fourteenth Amendments if we adhere to the views expressed both by the majority and the minority in the *Everson* case, counsel for the respondents challenge those views as dicta and urge that we reconsider and repudiate them. They argue that historically the First Amendment was intended to forbid only government preference of one religion over an-

[7]The dissenting judges said: "In view of this history no further proof is needed that the Amendment forbids any appropriation, large or small, from public funds to aid or support any and all religious exercises . . . Legislatures are free to make, and courts to sustain, appropriations only when it can be found that in fact they do not aid, promote, encourage or sustain religious teachings or observances, be the amount large or small." *Everson* v. *Board of Education*, 330 U.S. 1, 41, 52-53.

other, not an impartial governmental assistance of all religions. In addition they ask that we distinguish or overrule our holding in the *Everson* case that the Fourteenth Amendment made the "establishment of religion" clause of the First Amendment applicable as a prohibition against the States. After giving full consideration to the arguments presented we are unable to accept either of these contentions.

To hold that a state cannot consistently with the First and Fourteenth Amendments utilize its public school system to aid any or all religious faiths or sects in the dissemination of their doctrines and ideals does not, as counsel urge, manifest a governmental hostility to religion or religious teachings. A manifestation of such hostility would be at war with our national tradition as embodied in the First Amendment's guaranty of the free exercise of religion. For the First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere. Or, as we said in the *Everson* case, the First Amendment has erected a wall between Church and State which must be kept high and impregnable.

Here not only are the state's tax-supported public school buildings used for the dissemination of religious doctrines. The State also affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the state's compulsory public school machinery. This is not separation of Church and State.

The cause is reversed and remanded to the State Supreme Court for proceedings not inconsistent with this opinion.

Reversed and remanded.

SUPREME COURT OF THE UNITED STATES

No. 90.—October Term, 1947.

People of the State of Illinois ex rel. Vashti McCollum, Appellant, v. Board of Education of School District No. 71, Champaign County, Illinois et al.	Appeal from the Supreme Court of the State of Illinois.

[March 8, 1948.]

Mr. Justice Frankfurter delivered the following opinion, in which Mr. Justice Jackson, Mr. Justice Rutledge and Mr. Justice Burton join.*

We dissented in *Everson* v. *Board of Education,* 330 U. S. 1, because in our view the Constitutional principle requiring separation of Church and State compelled invalidation of the ordinance sustained by the majority. Illinois has here authorized the commingling of religious with secular instruction in the public schools. The Constitution of the United States forbids this.

This case, in the light of the *Everson* decision, demonstrates anew that the mere formulation of a relevant Constitutional principle is the beginning of the solution of a problem, not its answer. This is so because the meaning of a spacious conception like that of the separation of Church from State is unfolded as appeal is made to the principle from case to case. We are all

*Mr. Justice Rutledge and Mr. Justice Burton also concurred in the Court's opinion.

agreed that the First and the Fourteenth Amendments have a secular reach far more penetrating in the conduct of Government than merely to forbid an "established church." But agreement, in the abstract, that the First Amendment was designed to erect a "wall of separation between Church and State," does not preclude a clash of views as to what the wall separates. Involved is not only the Constitutional principle but the implications of judicial review in its enforcement. Accommodation of legislative and Constitutional limitations upon that freedom cannot be achieved by a mere phrase. We cannot illuminatingly apply the "wall-of-separation" metaphor until we have considered the relevant history of religious education in America, the place of the "released time" movement in that history, and its precise manifestation in the case before us.

To understand the particular program now before us as a conscientious attempt to accommodate the allowable functions of Government and the special concerns of the Church within the framework of our Constitution and with due regard to the kind of society for which it was designed, we must put this Champaign program of 1940 in its historic setting. Traditionally, organized education in the Western world was Church education. It could hardly be otherwise when the education of children was primarily study of the Word and the ways of God. Even in the Protestant countries, where there was a less close identification of Church and State, the basis of education was largely the Bible, and its chief purpose inculcation of piety. To the extent that the State intervened, it used its authority to further aims of the Church.

The emigrants who came to these shores brought this view of education with them. Colonial schools cer-

tainly started with a religious orientation. When the common problems of the early settlers of the Massachusetts Bay Colony revealed the need for common schools, the object was the defeat of "one chief project of that old deluder, Satan, to keep men from the knowledge of the Scriptures." The Laws and Liberties of Massachusetts, 1648 edition (Cambridge 1929) 47.[1]

The evolution of colonial education, largely in the service of religion, into the public school system of today is the story of changing conceptions regarding the American democratic society, of the functions of State-maintained education in such a society, and of the role therein of the free exercise of religion by the people. The modern public school derived from a philosophy of freedom reflected in the First Amendment. It is appropriate to recall that the Remonstrance of James Madison, an event basic in the history of religious liberty, was called forth by a proposal which involved support to religious education. See MR. JUSTICE RUTLEDGE'S opinion in the *Everson* case, *supra,* 330 U. S. at 36-37. As the momentum for popular education increased and in turn evoked strong claims for State support of religious education, contests not unlike that which in Virginia had produced Madison's Remonstrance appeared in various form in other States. New York and Massachusetts provide famous chapters in the history that established dissociation of religious teaching from State-maintained schools. In New York, the rise of the common schools led, despite fierce sec-

[1]For an exposition of the religious origins of American education, see S. W. Brown, The Secularization of American Education (1912) cc. I, II; Knight, Education in the United States (2d rev. ed. 1941) cc. III, V; Cubberley, Public Education in the United States (1934) cc. II, III.

tarian opposition, to the barring of tax funds to church schools, and later to any school in which sectarian doctrine was taught.[2] In Massachusetts, largely through the efforts of Horace Mann, all sectarian teachings were barred from the common school to save it from being rent by denominational conflict.[3] The upshot of these controversies, often long and fierce, is fairly summarized by saying that long before the Fourteenth Amendment subjected the States to new limitations, the prohibition of furtherance by the State of religious instruction became the guiding principle, in law and feeling, of the American people. In sustaining Stephen Girard's will, this Court referred to the inevitable conflicts engendered by matters "connected with religious polity" and particularly "in a country composed of such a variety of religious sects as our country." *Vidal et al.* v. *Girard's Executors*, 2 How. 127, 198. That was more than one hundred years ago.

Separation in the field of education, then, was not imposed upon unwilling States by force of superior law. In this respect the Fourteenth Amendment merely reflected a principle then dominant in our national life. To the extent that the Constitution thus made it binding upon the States, the basis of the restriction is the whole experience of our people. Zealous watchfulness

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[2]See Boese, Public Education in the City of New York (1869) c. XIV; Hall, Religious Education in the Public Schools of the State and City of New York (1914) cc. VI, VII; Palmer, The New York Public School (1905) cc. VI, VII, X, XII. And see New York Laws 1842, c. 150, § 14, amended, New York Laws 1844, c. 320, § 12.

[3]S. M. Smith, The Relation of the State to Religious Education in Massachusetts (1926) c. VII; Culver, Horace Mann and Religion in Massachusetts Public Schools (1929).

against fusion of secular and religious activities by Government itself, through any of its instruments but especially through its educational agencies, was the democratic response of the American community to the particular needs of a young and growing nation, unique in the composition of its people.[4] A totally different situation elsewhere, as illustrated for instance by the English provisions for religious education in State-maintained schools, only serves to illustrate that free societies are not cast in one mould. See the Education Act of 1944, 7 and 8 Geo. VI, c. 31. Different institutions evolve from different historic circumstances.

It is pertinent to remind that the establishment of this principle of separation in the field of education was not due to any decline in the religious beliefs of the people. Horace Mann was a devout Christian, and the deep religious feeling of James Madison is stamped upon the Remonstrance. The secular public school did not imply indifference to the basic role of religion in the life of the people, nor rejection of religious education as a means of fostering it. The claims of religion were not minimized by refusing to make the public schools agencies for their assertion. The non-sectarian or secular public school was the means of reconciling freedom in general with religious freedom. The sharp

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[4]It has been suggested that secular education in this country is the inevitable "product of 'the utter impossibility of harmonizing multiform creeds.'" T. W. M. Marshall, *Secular Education in England and the United States*, 1 American Catholic Quarterly Review 278, 308. It is precisely because of this "utter impossibility" that the fathers put into the Constitution the principle of complete "hands-off," for a people as religiously heterogeneous as ours.

confinement of the public schools to secular education was a recognition of the need of a democratic society to educate its children, insofar as the State undertook to do so, in an atmosphere free from pressures in a realm in which pressures are most resisted and where conflicts are most easily and most bitterly engendered. Designed to serve as perhaps the most powerful agency for promoting cohesion among a heterogeneous democratic people, the public school must keep scrupulously free from entanglement in the strife of sects. The preservation of the community from divisive conflicts, of Government from irreconcilable pressures by religious groups, of religion from censorship and coercion however subtly exercised, requires strict confinement of the State to instruction other than religious, leaving to the individual's church and home, indoctrination in the faith of his choice.

This development of the public school as a symbol of our secular unity was not a sudden achievement nor attained without violent conflict.[5] While in small communities of comparatively homogeneous religious beliefs, the need for absolute separation presented no urgencies, elsewhere the growth of the secular school

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[5]See Cubberley, Public Education in the United States (1934) pp. 230 *et seq.;* Zollmann, *The Relation of Church and State,* in Lotz and Crawford, Studies in Religious Education (1931) 403, 418 *et seq.;* Payson Smith, *The Public Schools and Religious Education,* in Religion and Education (Sperry, Editor, 1945) pp. 32 *et seq.;* also Mahoney, The Relation of the State to Religious Education in Early New York 1633-1825 (1941) c. VI; McLaughlin, A History of State Legislation Affecting Private Elementary and Secondary Schools in the United States, 1870-1945 (1946) c. I; and see note 10, *infra.*

encountered the resistance of feeling strongly engaged against it. But the inevitability of such attempts is the very reason for Constitutional provisions primarily concerned with the protection of minority groups. And such sects are shifting groups, varying from time to time, and place to place, thus representing in their totality the common interest of the nation.

Enough has been said to indicate that we are dealing not with a full-blown principle, nor one having the definiteness of a surveyor's metes and bounds. But by 1875 the separation of public education from Church entanglements, of the State from the teaching of religion, was firmly established in the consciousness of the nation. In that year President Grant made his famous remarks to the Convention of the Army of the Tennessee:

> "Encourage free schools and resolve that not one dollar appropriated for their support shall be appropriated for the support of any sectarian schools. Resolve that neither the state nor the nation, nor both combined, shall support institutions of learning other than those sufficient to afford every child growing up in the land the opportunity of a good common school education, unmixed with sectarian, pagan, or atheistical dogmas. Leave the matter of religion to the family altar, the church, and the private school, supported entirely by private contributions. Keep the church and state forever separated." "The President's Speech at Des Moines," 22 *Catholic World* 433, 434-35 (1876).

So strong was this conviction, that rather than rest on the comprehensive prohibitions of the First and

Fourteenth Amendments, President Grant urged that there be written into the United States Constitution particular elaborations, including a specific prohibition against the use of public funds for sectarian education,[6] such as had been written into many State

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[6]President Grant's Annual Message to Congress, December 7, 1875, 4 Cong. Rec. 175 *et seq.;* Ames, The Proposed Amendments to the Constitution of the United States during the First Century of its History, H. Doc. No. 353, Pt. 2, 54th Cong., 2d Sess., pp. 277-78. In addition to the first proposal, "The Blaine Amendment," five others to similar effect are cited by Ames. The reason for the failure of these attempts seems to have been in part "That the provisions of the State constitutions are in almost all instances adequate on this subject, and no amendment is likely to be secured." *Id.*

In the form in which it passed the House of Representatives, the Blaine Amendment read as follows: "No State shall make any law respecting an establishment of religion, or prohibiting the free exercise thereof; and no religious test shall ever be required as a qualification to any office or public trust under any State. No public property, and no public revenue of, nor any loan of credit by or under the authority of, the United States, or any State, Territory, District, or municipal corporation, shall be appropriated to, or made or used for, the support of any school, educational or other institution, under the control of any religious or anti-religious sect, organization, or denomination, or wherein the particular creed or tenets of any religious or anti-religious sect, organization, or denomination shall be taught. And no such particular creed or tenets shall be read or taught in any school or institution supported in whole or in part by such revenue or loan of credit; and no such appropriation or loan of credit shall be made to any religious or anti-religious sect, organization, or denomination, or to promote its interests or tenets. This article shall not be construed to prohibit the reading of the Bible in any school or institution; and it shall not have the effect to impair rights of property already vested . . ." H. Res. 1, 44th Cong., 1st Sess. (1876).

constitutions.[7] By 1894, in urging the adoption of such a provision in the New York Constitution, Elihu Root was able to summarize a century of the nation's history: "It is not a question of religion, or of creed, or of party; it is a question of declaring and maintaining the great American principle of eternal separation between Church and State." Root, Addresses on Government and Citizenship, 137, 140.[8] The extent to which this principle was deemed a presupposition of our Constitutional system is strikingly illustrated by the fact that every State admitted into the Union since 1876 was compelled by Congress to write into its constitu-

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[7]See *Constitutions of the States and United States*, 3 Report of the New York State Constitutional Convention Committee (1938) Index, pp. 1766-67.

[8]It is worthy of interest that another famous American lawyer, and indeed one of the most distinguished of American judges, Jeremiah S. Black, expressed similar views nearly forty years before Mr. Root: "The manifest object of the men who framed the institutions of this country, was to have a *State without religion* and a *Church without politics*—that is to say, they meant that one should never be used as an engine for any purpose of the other . . . Our fathers seem to have been perfectly sincere in their belief that the members of the Church would be more patriotic, and the citizens of the State more religious, by keeping their respective functions entirely separate. For that reason they built up a wall of complete and perfect partition between the two." From *Religious Liberty* (1856) in Black, Essays and Speeches (1886) 51, 53; cf. Brigance, Jeremiah Sullivan Black (1934). While Jeremiah S. Black and Elihu Root had many things in common, there were also important differences between them, perhaps best illustrated by the fact that one became Secretary of State to President Buchanan, the other to Theodore Roosevelt. That two men, with such different political alignment, should have shared identic views on a matter so basic to the well-being of our American democracy affords striking proof of the respect to be accorded to that principle.

tion a requirement that it maintain a school system "free from sectarian control."[9]

Prohibition of the commingling of religious and secular instruction in the public school is of course only half the story. A religious people was naturally concerned about the part of the child's education entrusted "to the family altar, the church, and the private school." The promotion of religious education took many forms. Laboring under financial difficulties and exercising only persuasive authority, various denominations felt handicapped in their task of religious education. Abortive attempts were therefore frequently made to obtain public funds for religious schools.[10]

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[9]25 Stat. 676, 677, applicable to North Dakota, South Dakota, Montana and Washington, required that the constitutional conventions of those States "provide, by ordinances irrevocable without the consent of the United States and the people of such States . . . for the establishment and maintenance of systems of public schools, which shall be open to all the children of said States, and free from sectarian control . . ." The same provision was contained in the Enabling Act for Utah, 28 Stat. 107, 108; Oklahoma, 34 Stat. 267, 270; New Mexico and Arizona, 36 Stat. 557, 559, 570. Idaho and Wyoming were admitted after adoption of their constitutions; that of Wyoming contained an irrevocable ordinance in the same terms. Wyoming Constitution, 1889, Ordinances, § 5. The Constitution of Idaho, while it contained no irrevocable ordinance, had a provision even more explicit in its establishment of separation. Idaho Constitution, 1889, art. IX, § 5.

[10]See, *e. g.*, the New York experience, including, *inter alia*, the famous Hughes controversy of 1840-42, the conflict culminating in the Constitutional Convention of 1894, and the attempts to restore aid to parochial schools by revision of the New York City Charter, in 1901, and at the State Constitutional Convention of 1938. See McLaughlin, A History of State Legislation Affecting Private Elementary and Secondary Schools in the United States, 1870-1945 (1946) pp. 119-25; Mahoney, The Re-

But the major efforts of religious inculcation were a recognition of the principle of Separation by the establishment of church schools privately supported. Parochial schools were maintained by various denominations. These, however, were often beset by serious handicaps, financial and otherwise, so that the religious aims which they represented found other directions. There were experiments with vacation schools, with Saturday as well as Sunday schools.[11] They all fell short of their purpose. It was urged that by appearing to make religion a one-day-a-week matter, the Sunday school, which acquired national acceptance, tended to relegate the child's religious education, and thereby his religion, to a minor role not unlike the enforced piano lesson.

Out of these inadequate efforts evolved the week-day

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lation of the State to Religious Education in Early New York 1633-1825 (1941) c. VI; Hall, Religious Education in the Public Schools of the State and the City of New York (1914) pp. 46-47; Boese, Public Education in the City of New York (1869) c. XIV; Compare New York Laws 1901, vol. 3, § 1152, p. 492, with amendment, *id.*, p. 688; see Nicholas Murray Butler, *Religion and Education* (Editorial) in 22 Educational Review 101, June, 1901; New York Times, April 8, 1901, p. 1, col. 1; April 9, 1901, p. 2, col. 5; April 19, 1901, p. 2, col. 2; April 21, 1901, p. 1, col. 3; Editorial, April 22, 1901, p. 6, col. 1.

Compare S. 2499, 79th Cong., 2d Sess., providing for Federal aid to education, and the controversy engendered over the inclusion in the aid program of sectarian schools, fully discussed in, *e. g.*, "The Nation's Schools," January through June, 1947.

[11]For surveys of the development of private religious education, see, *e. g.*, A. A. Brown, A History of Religious Education in Recent Times (1923); Athearn, Religious Education and American Democracy (1917); Burns and Kohlbrenner, A History of Catholic Education in the United States (1937); Lotz and Crawford, Studies in Religious Education (1931) Parts I and IV.

church school, held on one or more afternoons a week after the close of the public school. But children continued to be children; they wanted to play when school was out, particularly when other children were free to do so. Church leaders decided that if the week-day church school was to succeed, a way had to be found to give the child his religious education during what the child conceived to be his "business hours."

The initiation of the movement[12] may fairly be attributed to Dr. George U. Wenner. The underlying assumption of his proposal, made at the Interfaith Conference on Federation held in New York City in 1905, was that the public school unduly monopolized the child's time and that the churches were entitled to their share of it.[13] This, the schools should "release." Accordingly, the Federation, citing the example of the Third Republic of France,[14] urged that upon the re-

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[12]Reference should be made to Jacob Gould Schurman, who in 1903 proposed a plan bearing close resemblance to that of Champaign. See Symposium, 75 The Outlook 635, 636, November 14, 1903; Crooker, Religious Freedom in American Education (1903) pp. 39 *et seq.*

[13]For the text of the resolution, a brief in its support, as well as an exposition of some of the opposition it inspired, see Wenner's book, Religious Education and the Public School (rev. ed. 1913).

[14]The French example is cited not only by Wenner but also by Nicholas Murray Butler, who thought released time was "restoring the American system in the state of New York." *The Place of Religious Instruction in Our Educational System,* 7 Vital Speeches 167, 168 (Nov. 28, 1940); see also Report of the President of Columbia University, 1934, pp. 22-24. It is important to note, however, that the French practice must be viewed as the result of the struggle to emancipate the French schools from control by the Church. The leaders of this revolution, men

quest of their parents children be excused from public school on Wednesday afternoon, so that the churches could provide "Sunday school on Wednesday." This was to be carried out on church premises under church authority. Those not desiring to attend church schools would continue their normal classes. Lest these public school classes unfairly compete with the church education, it was requested that the school authorities refrain from scheduling courses or activities of compelling interest or importance.

The proposal aroused considerable opposition and it took another decade for a "released time" scheme to become part of a public school system. Gary, Indiana,

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like Paul Bert, Ferdinand Buisson, and Jules Ferry, agreed to this measure as one part of a great step towards, rather than a retreat from, the principle of Separation. The history of these events is described in Muzzey, *State, Church, and School in France*, The School Review, March through June, 1911.

In effect, moreover, the French practice differs in crucial respects from both the Wenner proposal and the Champaign system. The law of 1882 provided that "Public elementary schools will be closed one day a week in addition to Sunday in order to permit parents, if they so desire, to have their children given religious instruction outside of school buildings." Law No. 11,696, March 28, 1882, Bulletin des Lois, No. 690. This then approximates that aspect of released time generally known as "dismissed time." No children went to school on that day, and the public school was therefore not an alternative used to impel the children towards the religious school. The religious education was given "outside of school buildings."

The Vichy Government attempted to introduce a program of religious instruction within the public school system remarkably similar to that in effect in Champaign. The proposal was defeated by intense opposition which included the protest of the French clergy, who apparently feared State control of the Church. See Schwartz, *Religious Instruction under Petain*, 58 Christian Century 1170, Sept. 24, 1941.

inaugurated the movement. At a time when industrial expansion strained the communal facilities of the city, Superintendent of Schools Wirt suggested a fuller use of the school buildings. Building on theories which had become more or less current, he also urged that education was more than instruction in a classroom. The school was only one of several educational agencies. The library, the playground, the home, the church, all have their function in the child's proper unfolding. Accordingly, Wirt's plan sought to rotate the schedules of the children during the school-day so that some were in class, others were in the library, still others in the playground. And some, he suggested to the leading ministers of the City, might be released to attend religious classes if the churches of the City cooperated and provided them. They did, in 1914, and thus was "released time" begun. The religious teaching was held on church premises and the public schools had no hand in the conduct of these church schools. They did not supervise the choice of instructors or the subject matter taught. Nor did they assume responsibility for the attendance, conduct or achievement of the child in a church school; and he received no credit for it. The period of attendance in the religious schools would otherwise have been a play period for the child, with the result that the arrangement did not cut into public school instruction or truly affect the activities or feelings of the children who did not attend the church schools.[15]

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[15]Of the many expositions of the Gary plan, *e. g.*, A. A. Brown, *The Week-Day Church Schools of Gary, Indiana*, 11 Religious Education 5 (1916); Wirt, *The Gary Public Schools and the Churches*, *id.* at 221 (1916).

From such a beginning "released time" has attained substantial proportions. In 1914-15, under the Gary program, 619 pupils left the public schools for the church schools during one period a week. According to responsible figures almost 2,000,000 in some 2,200 communities participated in "released time" programs during 1947.[16] A movement of such scope indicates the importance of the problem to which the "released time" programs are directed. But to the extent that aspects of these programs are open to Constitutional objection, the more extensively the movement operates, the more ominous the breaches in the wall of separation.

Of course, "released time" as a generalized conception, undefined by differentiating particularities, is not an issue for Constitutional adjudication. Local programs differ from each other in many and crucial respects. Some "released time" classes are under separate denominational auspices, others are conducted jointly by several denominations, often embracing all the religious affiliations of a community. Some classes in religion teach a limited sectarianism; others emphasize democracy, unity and spiritual values not anchored in a particular creed. Insofar as these are manifestations merely of the free exercise of religion, they are quite outside the scope of judicial concern, except insofar as the Court may be called upon to protect the right of religious freedom. It is only when challenge is made to the share that the public schools have in the execution of a particular "released time" program that close

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[16]See the 1947 Yearbook, International Council of Religious Education, p. 76; also New York Times, September 21, 1947, p. 22, col. 1.

judicial scrutiny is demanded of the exact relation between the religious instruction and the public educational system in the specific situation before the Court.[17]

The substantial differences among arrangements lumped together as "released time" emphasize the importance of detailed analysis of the facts to which the Constitutional test of Separation is to be applied. How does "released time" operate in Champaign? Public school teachers distribute to their pupils cards supplied by church groups, so that the parents may indicate

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[17]Respects in which programs differ include, for example, the amount of supervision by the public school of attendance and performance in the religious class, of the course of study, of the selection of teachers; methods of enrolment and dismissal from the secular classes; the amount of school time devoted to operation of the program; the extent to which school property and administrative machinery are involved; the effect on the public school program of the introduction of "released time"; the proportion of students who seek to be excused; the effect of the program on non-participants; the amount and nature of the publicity for the program in the public schools.

The studies of detail in "released time" programs are voluminous. Most of these may be found in the issues of such periodicals as The International Journal of Religious Education, Religious Education, and Christian Century. For some of the more comprehensive studies found elsewhere, see Davis, Weekday Classes in Religious Education, U. S. Office of Education Bulletin 1941, No. 3; Gorham, A Study of the Status of Weekday Church Schools in the United States (1934); Lotz, *The Weekday Church School,* in Lotz and Crawford, Studies in Religious Education (1931) c. XII; Forsyth, Week-Day Church Schools (1930); Settle, The Weekday Church School, Educational Bulletin No. 601 of The International Council of Religious Education (1930); Shaver, Present-Day Trends in Religious Education (1928) cc. VII, VIII; Gove, Religious Education on Public School Time (1926).

whether they desire religious instruction for their children. For those desiring it, religious classes are conducted in the regular classrooms of the public schools by teachers of religion paid by the churches and appointed by them, but, as the State court found, "subject to the approval and supervision of the Superintendent." The courses do not profess to give secular instruction in subjects concerning religion. Their candid purpose is sectarian teaching. While a child can go to any of the religious classes offered, a particular sect wishing a teacher for its devotees requires the permission of the school superintendent "who in turn will determine whether or not it is practical for said group to teach in said school system." If no provision is made for religious instruction in the particular faith of a child, or if for other reasons the child is enrolled in any of the offered classes, he is required to attend a regular school class, or a study period during which he is often left to his own devices. Reports of attendance in the religious classes are submitted by the religious instructor to the school authorities, and the child who fails to attend is presumably deemed a truant.

Religious education so conducted on school time and property is patently woven into the working scheme of the school. The Champaign arrangement thus presents powerful elements of inherent pressure by the school system in the interest of religious sects. The fact that this power has not been used to discriminate is beside the point. Separation is a requirement to abtain from fusing functions of Government and of religious sects, not merely to treat them all equally. That a child is offered an alternative may reduce the constraint; it does not eliminate the operation of influence by the school in matters sacred to conscience and outside the

school's domain. The law of imitation operates, and non-conformity is not an outstanding characteristic of children. The result is an obvious pressure upon children to attend.[18] Again, while the Champaign school population represents only a fraction of the more than two hundred and fifty sects of the nation, not even all the practicing sects in Champaign are willing or able to provide religious instruction. The children belonging to these non-participating sects will thus have inculcated in them a feeling of separatism when the school should be the training ground for habits of community, or they will have religious instruction in a faith which is not that of their parents. As a result, the public school system of Champaign actively furthers inculcation in the religious tenets of some faiths, and in the process sharpens the consciousness of religious differences at least among some of the children committed to its care. These are consequences not amenable to statistics. But they are precisely the consequences against which the Constitution was directed when it prohibited the Government common to all from becoming embroiled, however innocently, in the destructive religious conflicts of which the history of even this country records some dark pages.[19]

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[18]It deserves notice that in discussing with the relator her son's inability to get along with his classmates, one of his teachers suggested that "allowing him to take the religious education course might help him to become a member of the group."

[19]The divergent views expressed in the briefs submitted here on behalf of various religious organizations, as *amici curiae*, in themselves suggest that the movement has been a divisive and not an irenic influence in the community: The American Unitarian Association; The General Conference of Seventh Day Adventists; The Joint Conference Committee on Public Rela-

Mention should not be omitted that the integration of religious instruction within the school system as practiced in Champaign is supported by arguments drawn from education theories as diverse as those derived from Catholic conceptions and from the writings of John Dewey.[20] Movements like "released time" are

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tions set up by the Southern Baptist Convention, The Northern Baptist Convention, The National Baptist Convention, Inc., and the National Baptist Convention; The Protestant Council of the City of New York; and The Synagogue Council of America and National Community Relations Advisory Council.

[20]There is a prolific literature on the educational, social and religious merits of the "released time" movement. In support of "released time" the following may be mentioned: The International Council of Religious Education, and particularly the writings of Dr. Erwin L. Shaver, for some years Director of its Department of Weekday Religious Education, in publications of the Council and in numerous issues of The International Journal of Religious Education (*e. g., They Reach One-Third,* Dec., 1943, p. 11; *Weekday Religious Education Today,* Jan., 1944, p. 6), and Religious Education (*e. g., Survey of Week-Day Religious Education,* Feb., 1922, p. 51; *The Movement for Weekday Religious Education,* Jan.-Feb., 1946, p. 6); see also Information Service, Federal Council of Churches of Christ, May 29, 1943. See also Cutton, *Answering the Arguments,* The International Journal of Religious Education, June, 1930, p. 9, and *Released Time, id.,* Sept., 1942, p. 12; Hauser, *"Hands Off the Public School?",* Religious Education, Mar.-Apr., 1942, p. 99; Collins, *Release Time for Religious Instruction,* National Catholic Education Association Bulletin, May, 1945, pp. 21, 27-28; Weigle, *Public Education and Religion,* Religious Education, Apr.-June, 1940, p. 67; Nicholas Murray Butler, *The Place of Religious Instruction in Our Educational System,* 7 Vital Speeches 167 (Nov. 28, 1940); Howlett, *Released Time for Religious Education in New York City,* 64 Education 523, May, 1944; Blair, *A Case for the Church School,* 7 Frontiers of Democracy 75, Dec. 15, 1940; cf. Allred, Legal Aspects of Release Time (National Catholic Welfare Conference, 1947). Fav-

seldom single in origin or aim. Nor can the intrusion of religious instruction into the public school system of Champaign be minimized by saying that it absorbs less

orable views are also cited in the studies in note 17, *supra.* Many not opposed to "released time" have declared it "hardly enough" or "pitifully inadequate." *E. g.,* Fleming, God in Our Public Schools (2d ed. 1944) pp. 80-86; Howlett, *Released Time for Religious Education in New York City,* Religious Education, Mar.-Apr., 1942, p. 104; Cavert, *Points of Tension Between Church and State in America Today,* in Church and State in the Modern World (1937) 161, 168; F. E. Johnson, The Church and Society (1935) 125; Hubner, Professional Attitudes toward Religion in the Public Schools of the United States Since 1900 (1944) 108-109, 113; cf. Ryan, *A Protestant Experiment in Religious Education,* The Catholic World, June, 1922; Elliott, *Are Weekday Church Schools the Solution?,* The International Journal of Religious Education, Nov., 1940, p. 8; Elliott, *Report of the Discussion,* Religious Education, July-Sept., 1940, p. 158.

For opposing views, see V. T. Thayer, Religion in Public Education (1947) cc. VII, VIII; Moehlman, The Church as Educator (1947) c. X; Chave, A Functional Approach to Religious Education (1947) 104-107; A. W. Johnson, The Legal Status of Church-State Relationships in the United States (1934) 129-130; Newman, The Sectarian Invasion of Our Public Schools (1925). See also Payson Smith, *The Public Schools and Religious Education,* in Religion and Education (Sperry, Editor, 1945) 32, 42-47; Herrick, *Religion in the Public Schools of America,* 46 Elementary School Journal 119, Nov., 1945; Kallen, *Churchmen's Claims on the Public School,* The Nation's Schools, May, 1942, p. 49; June, 1942, p. 52. And cf. John Dewey, *Religion in Our Schools* (1908), reprinted in 2 Characters and Events (1929) 504, 508, 514. "Released time" was introduced in the public schools of the City of New York over the opposition of organizations like the Public Education Association and the United Parents Associations.

The arguments and sources pro and con are collected in Hubner, Professional Attitudes toward Religion in the Public Schools in the United States since 1900 (1944) 94 *et seq.* And see the symposia, *Teaching Religion in a Democracy,* The International Journal of Religious Education, Nov., 1940, pp. 6-16; *The Aims*

than an hour a week; in fact, that affords evidence of a design constitutionally objectionable. If it were merely a question of enabling a child to obtain religious instruction with a receptive mind the thirty or forty-five minutes could readily be found on Saturday or Sunday. If that were all, Champaign might have drawn upon the French system, known in its American manifestation as "dismissed time," whereby one school day is shortened to allow all children to go where they please, leaving those who so desire to go to a religious school.[21] The momentum of the whole school atmosphere and school planning is presumably put behind religious instruction, as given in Champaign, precisely in order to secure for the religious instruction such momentum and planning. To speak of "released time" as being only half or three quarters of an hour is to draw a thread from a fabric.

We do not consider, as indeed we could not, school programs not before us which, though colloquially characterized as "released time," present situations differing in aspects that may well be constitutionally crucial. Different forms which "released time" has

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of Week-Day Religious Education, Religious Education, Feb., 1922, p. 11; *Released Time in New York City, id.*, Jan.-Feb., 1943, p. 15; *Progress in Weekday Religious Education, id.*, Jan.-Feb., 1946, p. 6; *Can Our Public Schools Do More about Religion?*, 125 Journal of Education 245, Nov., 1942, *id.* at 273, Dec., 1942; *Religious Instruction on School Time*, 7 Frontiers of Democracy 72-77, Dec. 15, 1940; and the articles in 64 Education 519 *et seq.*, May, 1944.

[21] See note 14, *supra.* Indications are that "dismissed time" is used in an inconsiderable number of the communities employing released time. Davis, Weekday Classes in Religious Education, U. S. Office of Education Bulletin 1941, No. 3, p. 22; Shaver, *The Movement for Weekday Religious Education*, Religious Education, Jan.-Feb., 1946, pp. 6, 9.

taken during more than thirty years of growth include programs which, like that before us, could not withstand the test of the Constitution; others may be found unexceptionable. We do not now attempt to weigh in the Constitutional scale every separate detail or various combination of factors which may establish a valid "released time" program. We find that the basic Constitutional principle of absolute separation was violated when the State of Illinois, speaking through its Supreme Court, sustained the school authorities of Champaign in sponsoring and effectively furthering religious beliefs by its educational arrangement.

Separation means separation, not something less. Jefferson's metaphor in describing the relation between Church and State speaks of a "wall of separation," not of a fine line easily overstepped. The public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny. In no activity of the State is it more vital to keep out divisive forces than in its schools, to avoid confusing, not to say fusing, what the Constitution sought to keep strictly apart. "The great American principle of eternal separation"—Elihu Root's phrase bears repetition—is one of the vital reliances of our Constitutional system for assuring unities among our people stronger than our diversities. It is the Court's duty to enforce this principle in its full integrity.

We renew our conviction that "we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion." *Everson* v. *Board of Education*, 330 U. S. at 59. If nowhere else, in the relation between Church and State, "good fences make good neighbors."

SUPREME COURT OF THE UNITED STATES

No. 90.—October Term, 1947.

People of the State of Illinois ex rel. Vashti McCollum, Appellant, *v.* Board of Education of School District No. 71, Champaign County, Illinois et al. — Appeal from the Supreme Court of the State of Illinois.

[March 8, 1948.]

Mr. Justice Jackson, concurring.

I join the opinion of Mr. Justice Frankfurter, and concur in the result reached by the Court, but with these reservations: I think it is doubtful whether the facts of this case establish jurisdiction in this Court, but in any event that we should place some bounds on the demands for interference with local schools that we are empowered or willing to entertain. I make these reservations a matter of record in view of the number of litigations likely to be started as a result of this decision.

A Federal Court may interfere with local school authorities only when they invade either a personal liberty or a property right protected by the Federal Constitution. Ordinarily this will come about in either of two ways:

First. When a person is required to submit to some religious rite or instruction or is deprived or threatened with deprivation of his freedom for resisting such unconstitutional requirement. We may then set him free or rejoin his prosecution. Typical of such cases

was *West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624. There penalties were threatened against both parent and child for refusal of the latter to perform a compulsory ritual which offended his convictions. We intervened to shield them against the penalty. But here, complainant's son may join religious classes if he chooses and if his parents so request, or he may stay out of them. The complaint is that when others join and he does not, it sets him apart as a dissenter, which is humiliating. Even admitting this to be true, it may be doubted whether the Constitution which, of course, protects the right to dissent, can be construed also to protect one from the embarrassment that always attends nonconformity, whether in religion, politics, behavior or dress. Since no legal compulsion is applied to complainant's son himself and no penalty is imposed or threatened from which we may relieve him, we can hardly base jurisdiction on this ground.

Second. Where a complainant is deprived of property by being taxed for unconstitutional purposes, such as directly or indirectly to support a religious establishment. We can protect a taxpayer against such a levy. This was the *Everson Case,* 330 U. S. 1, as I saw it then and see it now. It was complained in that case that the school treasurer drew a check on public funds to reimburse parents for a child's bus fare if he went to a Catholic parochial school or a public school, but not if he went to any other private or denominational school. Reference to the record in that case will show that the School District was not operating busses, so it was not a question of allowing Catholic children to ride publicly owned busses along with others, in the interests of their safety, health or morals. The child had to

travel to and from parochial school on commercial busses like other paying passengers and all other school children, and he was exposed to the same dangers. If it could, in fairness, have been said that the expenditure was a measure for the protection of the safety, health or morals of youngsters, it would not merely have been constitutional to grant it; it would have been unconstitutional to refuse it to any child merely because he was a Catholic. But in the *Everson Case* there was a direct, substantial and measurable burden on the complainant as a taxpayer to raise funds that were used to subsidize transportation to parochial schools. Hence, we had jurisdiction to examine the constitutionality of the levy and to protect against it if a majority had agreed that the subsidy for transportation was unconstitutional.

In this case, however, any cost of this plan to the taxpayers is incalculable and negligible. It can be argued, perhaps, that religious classes add some wear and tear on public buildings and that they should be charged with some expense for heat and light, even though the sessions devoted to religious instruction do not add to the length of the school day. But the cost is neither substantial nor measurable, and no one seriously can say that the complainant's tax bill has been proved to be increased because of this plan. I think it is doubtful whether the taxpayer in this case has shown any substantial property injury.

If, however, jurisdiction is found to exist, it is important that we circumscribe our decision with some care. What is asked is not a defensive use of judicial power to set aside a tax levy or reverse a conviction, or to enjoin threats of prosecution or taxation. The relief demanded in this case is the extraordinary writ

of mandamus to tell the local Board of Education what it must do. The prayer for relief is that a writ issue against the Board of Education "ordering it to immediately adopt and enforce rules and regulations prohibiting all instruction in and teaching of religious education in all public schools . . . and in all public school houses and buildings in said district when occupied by public schools." The plaintiff, as she has every right to be, is an avowed atheist. What she has asked of the courts is that they not only end the "released time" plan but also ban every form of teaching which suggests or recognizes that there is a God. She would ban all teaching of the Scriptures. She especially mentions as an example of invasion of her rights "having pupils learn and recite such statements as, 'The Lord is my Shepherd, I shall not want.' " And she objects to teaching that the King James version of the Bible "is called the Christian's Guide Book, the Holy Writ and the Word of God," and many other similar matters. This Court is directing the Illinois courts generally to sustain plaintiff's complaint without exception of any of these grounds of complaint, without discriminating between them and without laying down any standards to define the limits of the effect of our decision.

To me, the sweep and detail of these complaints is a danger signal which warns of the kind of local controversy we will be required to arbitrate if we do not place appropriate limitation on our decision and exact strict compliance with jurisdictional requirements. Authorities list 256 separate and substantial religious bodies to exist in continental United States. Each of them, through the suit of some discontented but unpenalized and untaxed representative, has as good a right as this plaintiff to demand that the courts compel

the schools to sift out of their teaching everything inconsistent with its doctrines. If we are to eliminate everything that is objectionable to any of these warring sects or inconsistent with any of their doctrines, we will leave public education in shreds. Nothing but educational confusion and a discrediting of the public school system can result from subjecting it to constant law suits.

While we may and should end such formal and explicit instruction as the Champaign plan and can at all times prohibit teaching of creed and catechism and ceremonial and can forbid forthright proselyting in the schools, I think it remains to be demonstrated whether it is possible, even if desirable, to comply with such demands as plaintiff's completely to isolate and cast out of secular education all that some people may reasonably regard as religious instruction. Perhaps subjects such as mathematics, physics or chemistry are, or can be, completely secularized. But it would not seem practical to teach either practice or appreciation of the arts if we are to forbid exposure of youth to any religious influences. Music without sacred music, architecture minus the cathedral, or painting without the scriptural themes would be eccentric and incomplete, even from a secular point of view. Yet the inspirational appeal of religion in these guises is often stronger than in forthright sermon. Even such a "science" as biology raises the issue between evolution and creation as an explanation of our presence on this planet. Certainly a course in English literature that omitted the Bible and other powerful uses of our mother tongue for religious ends would be pretty barren. And I should suppose it is a proper, if not an indispensable, part of preparation for a worldly life to

know the roles that religion and religions have played in the tragic story of mankind. The fact is that, for good or for ill, nearly everything in our culture worth transmitting, everything which gives meaning to life, is saturated with religious influences, derived from paganism, Judaism, Christianity—both Catholic and Protestant—and other faiths accepted by a large part of the world's peoples. One can hardly respect a system of education that would leave the student wholly ignorant of the currents of religious thought that move the world society for a part in which he is being prepared.

But how one can teach, with satisfaction or even with justice to all faiths, such subjects as the story of the Reformation, the Inquisition, or even the New England effort to found "a Church without a Bishop and a State without a King," is more than I know. It is too much to expect that mortals will teach subjects about which their contemporaries have passionate controversies with the detachment they may summon to teaching about remote subjects such as Confucius or Mohamet. When instruction turns to proselyting and imparting knowledge becomes evangelism is, except in the crudest cases, a subtle inquiry.

The opinions in this case show that public educational authorities have evolved a considerable variety of practices in dealing with the religious problem. Neighborhoods differ in racial, religious and cultural compositions. It must be expected that they will adopt different customs which will give emphasis to different values and will induce different experiments. And it must be expected that, no matter what practice prevails, there will be many discontented and possibly belligerent minorities. We must leave some flexibility

to meet local conditions, some chance to progress by trial and error. While I agree that the religious classes involved here go beyond permissible limits, I also think the complaint demands more than plaintiff is entitled to have granted. So far as I can see this Court does not tell the State court where it may stop, nor does it set up any standards by which the State court may determine that question for itself.

The task of separating the secular from the religious in education is one of magnitude, intricacy and delicacy. To lay down a sweeping constitutional doctrine as demanded by complainant and apparently approved by the Court, applicable alike to all school boards of the nation, "to immediately adopt and enforce rules and regulations prohibiting all instruction in and teaching of religious education in all public schools," is to decree a uniform, rigid and, if we are consistent, an unchanging standard for countless school boards representing and serving highly localized groups which not only differ from each other but which themselves from time to time change attitudes. It seems to me that to do so is to allow zeal for our own ideas of what is good in public instruction to induce us to accept the role of a super board of education for every school district in the nation.

It is idle to pretend that this task is one for which we can find in the Constitution one word to help us as judges to decide where the secular ends and the sectarian begins in education. Nor can we find guidance in any other legal source. It is a matter on which we can find no law but our own prepossessions. If with no surer legal guidance we are to take up and decide every variation of this controversy, raised by persons not subject to penalty or tax but who are dissatisfied with

the way schools are dealing with the problem, we are likely to have much business of the sort. And, more importantly, we are likely to make the legal "wall of separation between church and state" as winding as the famous serpentine wall designed by Mr. Jefferson for the University he founded.

SUPREME COURT OF THE UNITED STATES

No. 90—October Term, 1947.

People of the State of Illinois ex rel. Vashti McCollum, Appellant,	
v.	Appeal from the Supreme Court of the State of Illinois.
Board of Education of School District No. 71, Champaign County, Illinois et al.	

[March 8, 1948.]

Mr. Justice Reed, dissenting.

The decisions reversing the judgment of the Supreme Court of Illinois interpret the prohibition of the First Amendment against the establishment of religion, made effective as to the states by the Fourteenth Amendment, to forbid pupils of the public schools electing, with the approval of their parents, courses in religious education. The courses are given, under the school laws of Illinois as approved by the Supreme Court of that state, by lay or clerical teachers supplied and directed by an interdenominational, local council

of religious education.[1] The classes are held in the respective school buildings of the pupils at study or released time periods so as to avoid conflict with recitations. The teachers and supplies are paid for by the interdenominational group.[2] As I am convinced that this interpretation of the First Amendment is erroneous, I feel impelled to express the reasons for my disagreement. By directing attention to the many instances of close association of church and state in American society and by recalling that many of these relations are so much a part of our tradition and culture that they are accepted without mores, this dissent may help in an appraisal of the meaning of the clause of the First Amendment concerning the establishment of religion and of the reasons which lead to the approval or disapproval of the judgment below.

The reasons for the reversal of the Illinois judgment, as they appear in the respective opinions may be summarized by the following excerpts. The opinion of the Court after stating the facts, says: "The foregoing facts, without reference to others that appear in the record, show the use of tax-supported property for religious instruction and the close cooperation be-

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[1]The trial court found that: " 'The Champaign Council of Religious Education' [is] a voluntary association made up of the representatives of the Jewish, Roman Catholic and Protestant faiths in the school district."

[2]There is no extra cost to the state but as a theoretical accounting problem it may be correct to charge to the classes their comparable proportion of the state expense for buildings, operation and teachers. In connection with the classes, the teachers need only keep a record of the pupils who attend. Increased custodial requirements are likewise nominal. It is customary to use school buildings for community activities when not needed for school purposes. See Ill. Rev. Stat., ch. 122, § 123.

tween the school authorities and the religious council in promoting religious education. . . . And it falls squarely under the ban of the First Amendment (made applicable to the States by the Fourteenth) as we interpreted it in *Everson* v. *Board of Education,* 330 U. S. 1." Another opinion phrases it thus: "We do not now attempt to weigh in the Constitutional scale every separate detail or various combination of factors which may establish a valid 'released time' program. We find that the basic Constitutional principle of absolute separation was violated when the State of Illinois, speaking by its Supreme Court, sustained the school authorities of Champaign in sponsoring and effectively furthering religious beliefs by its educational arrangement." These expressions in the decisions seem to leave open for further litigation variations from the Champaign plan. Actually, however, future cases must run the gauntlet not only of the judgment entered but of the accompanying words of the opinions. I find it difficult to extract from the opinions any conclusion as to what it is in the Champaign plan that is unconstitutional. Is it the use of school buildings for religious instruction; the release of pupils by the schools for religious instruction during school hours; the so-called assistance by teachers in handing out the request cards to pupils, in keeping lists of them for release and records of their attendance; or the action of the principals in arranging an opportunity for the classes and the appearance of the Council's instructors? None of the reversing opinions say whether the purpose of the Champaign plan for religious instruction during school hours is unconstitutional or whether it is some ingredient used in or omitted from the formula that makes the plan unconstitutional.

From the tenor of the opinions I conclude that their teachings are that any use of a pupil's school time whether that use is on or off the school grounds, with the necessary school regulations to facilitate attendance, falls under the ban. I reach this conclusion notwithstanding one sentence of indefinite meaning in the second opinion: "We do not consider, as indeed we could not, school programs not before us which, though colloquially characterized as 'released time,' present situations differing in aspects that may well be constitutionally crucial." The use of the words "cooperation," "fusion," "complete hands-off," "integrate" and "integrated" to describe the relations between the school and the Council in the plan evidences this. So does the interpretation of the word "aid." The criticized "momentum of the whole school atmosphere," "feeling of separatism" engendered in the non-participating sects, "obvious pressure . . . to attend," and "divisiveness" lead to the stated conclusion. From the holding and the language of the opinions, I can only deduce that religious instruction of public school children during school hours is prohibited. The history of American education is against such an interpretation of the First Amendment.

The opinions do not say in words that the condemned practice of religious education is a law respecting an establishment of religion contrary to the First Amendment. The practice is accepted as a state law by all. I take it that when the opinion of the Court says that "The operation of the state's compulsory education system thus assists and is integrated with the program of religious instruction carried on by separate religious sects" and concludes "This is beyond all question a utilization of the tax-established and tax-supported

public school system to aid religious groups to spread their faith," the intention of its author is to rule that this practice is a law "respecting an establishment of religion." That was the basis of *Everson* v. *Board of Education,* 330 U. S. 1. It seems obvious that the action of the School Board in permitting religious education in certain grades of the schools by all faiths did not prohibit the free exercise of religion. Even assuming that certain children who did not elect to take instruction are embarrassed to remain outside of the classes, one can hardly speak of that embarrassment as a prohibition against the free exercise of religion. As no issue of prohibition upon the free exercise of religion is before us, we need only examine the School Board's action to see if it constitutes an establishment of religion.

The facts, as stated in the reversing opinions, are adequately set out if we interpret the abstract words used in the light of the concrete incidents of the record. It is correct to say that the parents "consented" to the religious instruction of the children, if we understand "consent" to mean the signing of a card like the one in the margin.[3] It is correct to say that "instructors were subject to the approval and supervision of the superintendent of schools," if it is understood that there were no definitive written rules and that the practice was as is shown in the excerpts from the

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[3]"CHAMPAIGN COUNCIL OF RELIGIOUS EDUCATION
1945-1946
Parent's Request Card

Please permit.....in Grade.....at.....
School to attend a class in Religious Education one period a

findings below.[4] The substance of the religious education course is determined by the members of the vari-

week under the Auspices of the Champaign Council of Religious Education.

(Check which)

Date.....

( ) Interdenominational
( ) Protestant
( ) Roman Catholic
( ) Jewish

Signed.....
(Parent Name)

Parent's Church.....
Telephone No.....Address.....

A fee of 25 cents a semester is charged each pupil to help cover the cost of material used.

If you wish your child to receive religious instruction, please sign this card and return to the school.

Mae Chapin, Director."

Mae Chapin, the Director, was not a school employee.

[4]"The superintendent testified that Jehovah's Witnesses or any other sect would be allowed to teach provided their teachers had proper educational qualifications, so that bad grammar, for instance, would not be taught to the pupils. A similar situation developed with reference to the Missouri Synod of the Lutheran Church. The evidence tends to show that during the course of the trial that group indicated it would affiliate with the Council of Religious Education.

"Before any faith or other group may obtain permission from the defendant for the similar, free and equal use of rooms in the public school buildings said faith or group must make application to the superintendent of schools of said School District Number 71, who in turn will determine whether or not it is practical for said group to teach in said school system.

"The court feels from all the facts in the record that an honest attempt has been made and is being made to permit religious instruction to be given by qualified outside teachers of any sect to people of their own faith in the manner above outlined. The evidence shows that no sect or religious group has ever been denied the right to use the schools in this manner."

ous churches on the council, not by the superintendent.[5] The evidence and findings set out in the two preceding notes convince me that the "approval and supervision" referred to above are not of the teachers and the course of studies but of the orderly presentation of the courses to those students who may elect the instruction. The teaching largely covered Biblical incidents.[6] The religious teachers and their teachings, in every real sense, were financed and regulated by the Council of Religious Education, not the School Board.

The phrase "an establishment of religion" may have been intended by Congress to be aimed only at a state church. When the First Amendment was pending in Congress in substantially its present form, "Mr. Madison said, he apprehended the meaning of the words to

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[5]A finding reads: "The curriculum of studies in the Protestant classes is determined by a committee of the Protestant members of the council of religious education after consultation with representatives of all the different faiths included in said council. The Jewish classes of course would deny the divinity of Jesus Christ. The teaching in the Catholic classes of course explains to Catholic pupils the teaching of the Catholic religion, and are not shared by other students who are Protestants or Jews. The teachings in the Protestant classes would undoubtedly, from the evidence, teach some doctrines that would not be accepted by the other two religions."

[6]It was found: "The testimony shows that sectarian differences between the sects are not taught or emphasized in the actual teaching as it is conducted in the schools. The testimony of the religious education teachers, the secular teachers who testified, and the many children, mostly from Protestant families, who either took or did not take religious education courses, is to the effect that religious education classes have fostered tolerance rather than intolerance."

The Supreme Court of Illinois said: "The religious education courses do not go to the extent of being worship services and do not include prayers or the singing of hymns." 396 Ill. 14, 21.

be, that Congress should not establish a religion, and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience."[7] Passing years, however, have brought about acceptance of a broader meaning, although never until today, I believe, has this Court widened its interpretation to any such degree as holding that recognition of the interest of our nation in religion, through the granting, to qualified representatives of the principal faiths, of opportunity to present religion as an optional, extracurricular subject during released school time in public school buildings, was equivalent to an establishment of religion. A reading of the general statements of eminent statesmen of former days, referred to in the opinions in this and *Everson* v. *Board of Education, supra,* will show that circumstances such as those in this case were far from the minds of the authors. The words and spirit of those statements may be wholeheartedly accepted without in the least impugning the judgment of the State of Illinois.[8]

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[7] 1 Annals of Congress 730.

[8] For example, Mr. Jefferson's striking phrase as to the "wall of separation between church and State" appears in a letter acknowledging "the affectionate sentiments of esteem and approbation" included in a testimonial to himself. In its context it read as follows:

"Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between church and State." 8 The Writings of Thomas Jefferson (Washington ed., 1861) 113.

Mr. Jefferson, as one of the founders of the University of Virginia, a school which from its establishment in 1819 has been wholly governed, managed and controlled by the State of Virginia,[9] was faced with the same problem that is before this Court today: the question of the constitutional limitation upon religious education in public schools. In his annual report as Rector, to the President and Directors of the Literary Fund, dated October 7, 1822, approved by the Visitors of the University of whom Mr. Madison was one,[10] Mr. Jefferson set forth his views at some length.[11] These

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[9]Acts of the Assembly of 1818-19 (1819) 15; *Phillips* v. *The Rector and Visitors of the University of Virginia*, 97 Va. 472, 474-75.

[10]19 The Writings of Thomas Jefferson (Memorial edition, 1904) 408, 409.

[11]*Id.*, pp. 414-17:

"It was not, however, to be understood that instruction in religious opinion and duties was meant to be precluded by the public authorities, as indifferent to the interests of society. On the contrary, the relations which exist between man and his Maker, and the duties resulting from those relations, are the most interesting and important to every human being, and the most incumbent on his study and investigation. The want of instruction in the various creeds of religious faith existing among our citizens presents, therefore, a chasm in a general institution of the useful sciences . . . A remedy, however, has been suggested of promising aspect, which, while it excludes the public authorities from the domain of religious freedom, will give to the sectarian schools of divinity the full benefit the public provisions made for instruction in the other branches of science . . . It has, therefore, been in contemplation, and suggested by some pious individuals, who perceive the advantages of associating other studies with those of religion, to establish their religious schools on the confines of the University, so as to give to their students ready and convenient access and attendance on the scientific lectures of the University; and to maintain, by that means, those destined for the religious pro-

suggestions of Mr. Jefferson were adopted[12] and ch. II, § 1, of the Regulations of the University of October 4, 1824, provided that:

> "Should the religious sects of this State, or any of them, according to the invitation held out to them, establish within, or adjacent to, the precincts of the University, schools for instruction in the religion of their sect, the students of the University will be free, and expected to attend reli-

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fessions on as high a standing of science, and of personal weight and respectability, as may be obtained by others from the benefits of the University. Such establishments would offer the further and greater advantage of enabling the students of the University to attend religious exercises with the professor of their particular sect, either in the rooms of the building still to be erected, and destined to that purpose under impartial regulations, as proposed in the same report of the commissioners, or in the lecturing room of such professor . . . Such an arrangement would complete the circle of the useful sciences embraced by this institution, and would fill the chasm now existing, on principles which would leave inviolate the constitutional freedom of religion, the most inalienable and sacred of all human rights, over which the people and authorities of this state, individually and publicly, have ever manifested the most watchful jealousy: and could this jealousy be now alarmed, in the opinion of the legislature, by what is here suggested, the idea will be relinquished on any surmise of disapprobation which they might think proper to express."

Mr. Jefferson commented upon the report on November 2, 1822, in a letter to Dr. Thomas Cooper, as follows: "And by bringing the sects together, and mixing them with the mass of other students, we shall soften their asperities, liberalize and neutralize their prejudices, and make the general religion a religion of peace, reason, and morality." 12Ford, *The Works of Thomas Jefferson,* (Fed. ed., 1905), 272.

[12]3 Randall, Life of Thomas Jefferson (1858) 471.

gious worship at the establishment of their respective sects, in the morning, and in time to meet their school in the University at its stated hour."[13]

Thus, the "wall of separation between church and State" that Mr. Jefferson built at the University which he founded did not exclude religious education from that school. The difference between the generality of his statements on the separation of church and state and the specificity of his conclusions on education are considerable. A rule of law should not be drawn from a figure of speech.

Mr. Madison's *Memorial and Remonstrance against Religious Assessments*[14] relied upon by the dissenting Justices in *Everson* is not applicable here.[15] Mr. Madison was one of the principal opponents in the Virginia General Assembly of *A Bill Establishing a Provision for Teachers of the Christian Religion.* The monies raised by the taxing section[16] of that bill were to be

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[13]19 The Writings of Thomas Jefferson (Memorial edition, 1904) 449.

[14]The texts of the *Memorial and Remonstrance* and the bill against which it was aimed, to wit, *A Bill Establishing a Provision for Teachers of the Christian Religion* are set forth in *Everson* v. *Board of Education,* 330 U. S. 1, 28, 63-74.

[15]See, generally, the dissent of MR. JUSTICE RUTLEDGE, 330 U. S. 1, 28.

[16]330 U. S. at 72-73:

"*Be it therefore enacted by the General Assembly,* That for the support of Christian teachers, per centum on the amount, or in the pound on the sum payable for tax on the property within this Commonwealth, is hereby assessed, and shall be paid by every person chargeable with the said tax at the time the same shall become due; and the Sheriffs of the several Counties shall have power to levy and collect the same in the same manner and under the like restrictions and limitations, as are or

appropriated "by the Vestries, Elders, or Directors of each religious society . . . to a provision for a Minister or Teacher of the Gospel of their denomination, or the providing places of divine worship, and to none other use whatsoever . . ." The conclusive legislative struggle over this act took place in the fall of 1785 before the adoption of the Bill of Rights. The *Remonstrance* had been issued before the General Assembly convened and was instrumental in the final defeat of the act which died in committee. Throughout the *Remonstrance,* Mr. Madison speaks of the "establishment" sought to be effected by the act. It is clear from its historical setting and its language that the Remonstrance was a protest against an effort by Virginia to support Christian sects by taxation. Issues similar to those raised by the instant case were not discussed. Thus, Mr. Madison's approval of Mr. Jefferson's report as Rector gives, in my opinion, a clearer indication of his views on the constitutionality of religious education in public schools than his general statements on a different subject.

This Court summarized the amendment's accepted reach into the religious field, as I understand its scope, in *Everson* v. *Board of Education, supra.* The Court's opinion quotes the gist of the Court's reasoning in *Everson.* I agree as there stated that none of our governmental entities can "set up a church." I agree that

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may be prescribed by the laws for raising the Revenues of this State.

"*And be it enacted,* That for every sum so paid, the Sheriff or Collector shall give a receipt, expressing therein to what society of Christians the person from whom he may receive the same shall direct the money to be paid, keeping a distinct account thereof in his books . . ."

they cannot "aid" all or any religions or prefer one "over another." But "aid" must be understood as a purposeful assistance directly to the church itself or to some religious group or organization doing religious work of such a character that it may fairly be said to be performing ecclesiastical functions. "Prefer" must give an advantage to one "over another." I agree that pupils cannot "be released in part from their legal duty" of school attendance upon condition that they attend religious classes. But as Illinois has held that it is within the discretion of the School Board to permit absence from school for religious instruction no legal duty of school attendance is violated. 396 Ill. 14. If the sentence in the Court's opinion, concerning the pupils' release from legal duty, is intended to mean that the Constitution forbids a school to excuse a pupil from secular control during school hours to attend voluntarily a class in religious education, whether in or out of school buildings, I disagree. Of course, no tax can be levied to support organizations intended "to teach or practice religion." I agree too that the state cannot influence one toward religion against his will or punish him for his beliefs. Champaign's religious education course does none of these things.

It seems clear to me that the "aid" referred to by the Court in the *Everson* case could not have been those incidental advantages that religious bodies, with other groups similarly situated, obtain as a by-product of organized society. This explains the well-known fact that all churches receive "aid" from government in the form of freedom from taxation. The *Everson* decision itself justified the transportation of children to church schools by New Jersey for safety reasons. It accords

with *Cochran* v. *Louisiana State Board of Education,* 281 U. S. 370, where this Court upheld a free textbook statute of Louisiana against a charge that it aided private schools on the ground that the books were for the education of the children, not to aid religious schools. Likewise the National School Lunch Act aids all school children attending tax exempt schools.[17] In *Bradfield* v. *Roberts,* 175 U. S. 291, this Court held proper the payment of money by the Federal Government to build an addition to a hospital, chartered by individuals who were members of a Roman Catholic sisterhood, and operated under the auspices of the Roman Catholic Church. This was done over the objection that it aided the establishment of religion.[18] While obviously in these instances the respective churches, in a certain sense, were aided, this Court has never held that such "aid" was in violation of the First or Fourteenth Amendments.

Well-recognized and long-established practice support the validity of the Illinois statute here in question. That statute, as construed in this case, is comparable to those in many states.[19] All differ to some extent.

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[17]60 Stat. ch. 281, §§ 4, 11 (d) (3).

[18]See *Selective Draft Law Cases,* 245 U. S. 366, 390; *Quick Bear* v. *Leupp,* 210 U. S. 50.

[19]Ed. Code of Cal. (Deering, 1944) § 8286; 6 Ind. Stat. Ann. (Burns, 1934) 1945 Supp. § 28-505a; 1 Code of Iowa ch. 299, § 299.2 (1946); Ky. Rev. Stat. (1946) § 158.220; 1 Rev. Stat. of Maine (1944) ch. 37, § 131; 2 Ann. Laws of Mass. (1945) ch. 76, § 1; Minn. Stat. (1945) § 132.05; N. Y. Education Law, § 3210 (1); 8 Ann. Laws of Oreg. (1940) § 111-3014; 24 Pa. Stat. Ann. (Purdon, 1930) 1947 Supp. § 1563; 1 Code of S. D. (1939) § 15.3202; 1 Code of W. Va. (1943) § 1847.

New York may be taken as a fair example.[20] In many states the program is under the supervision of a religious council composed of delegates who are them-

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[20]Education Law § 3210 (1) provides that: "a. A minor required by the provisions of part one of this article to attend upon instruction shall attend regularly as prescribed where he resides or is employed, for the entire time the appropriate public schools or classes are in session and shall be subordinate and orderly while so attending.

"b. Absence for religious observance and education shall be permitted under rules that the commissioner shall establish."

Acting under the authority of the New York law the State Commissioner of Education issued, on July 4, 1940, these regulations:

"1 Absence of a pupil from school during school hours for religious observance and education to be had outside the school building and grounds will be excused upon the request in writing signed by the parent or guardian of the pupil.

"2 The courses in religious observance and education must be maintained and operated by or under the control of a duly constituted religious body or of duly constituted religious bodies.

"3 Pupils must be registered for the courses and a copy of the registration filed with the local public school authorities.

"4 Reports of attendance of pupils upon such courses shall be filed with the principal or teacher at the end of each week.

"5 Such absence shall be for not more than one hour each week at the close of a session at a time to be fixed by the local school authorities.

"6 In the event that more than one school for religious observance and education is maintained in any district, the hour for absence for each particular public school in such district shall be the same for all such religious schools."

On November 13, 1940, rules to govern the released time program of the New York City schools were adopted by the Board of Education of the City of New York. Under these rules the practice of the religious education program is this: classes in religious education are to be held outside of school buildings; establishment of the program rests in the initiative of the church and home; enrollment is voluntary and accomplished by

selves communicants of various faiths.[21] As is shown by *Bradfield* v. *Roberts, supra,* the fact that the members of the council have religious affiliations is not significant. In some, instruction is given outside of the school buildings; in others, within these buildings. Metropolitan centers like New York usually would have available quarters convenient to schools. Unless smaller cities and rural communities use the school building at times that do not interfere with recitations, they may be compelled to give up religious education. I understand that pupils not taking religious education usually are given other work of a secular nature within the schools.[22] Since all these states use the facilities of the

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this technique: the church distributes cards to the parents and these are filled out and presented to the school; records of enrollment and arrangements for release are handled by school authorities; discipline is the responsibility of the church; and children who do not attend are kept at school and given other work. See Rules of the Board of Education of the City of New York adopted Nov. 13, 1940; Public Education Association, *Released Time for Religious Education in New York City Schools* (1943); *id.* (1945).

Constitutional approval by the New York Court of Appeals of these practices was given before the passage of Education Law § 3210 (1). *People ex rel. Lewis* v. *Graves,* 245 N. Y. 195.

[21]The New York City program is supervised by The Greater New York Coordinating Committee on Released Time, a group of laymen drawn from Jews, Protestants and Roman Catholics. This Committee is an example of a broad national effort to bring about religious education of children through cooperative action of schools and groups of members of various religious denominations. The methods vary in different states and cities but are basically like the work of the New York City Committee. See *Brief Sketches of Weekday Church Schools,* Department of Weekday Religious Education, International Council of Religious Education, Chicago, Illinois (1944).

[22]See note 20 *supra.*

schools to aid the religious education to some extent, their desire to permit religious education to school children is thwarted by this Court's judgment.[23] Under it, as I understand its language, children cannot be released or dismissed from school to attend classes in religion while other children must remain to pursue secular education. Teachers cannot keep the records as to which pupils are to be dismissed and which retained. To do so is said to be an "aid" in establishing religion; the use of public money for religion.

Cases running into the scores have been in the state courts of last resort that involved religion and the schools. Except where the exercises with religious significance partook of the ceremonial practice of sects or groups, their constitutionality has been generally upheld.[24] Illinois itself promptly struck down as violative

[23]The use of school buildings is not unusual. See Davis, *Weekday Classes in Religious Education*, U. S. Office of Education (Bulletin 1941, No. 3) 27; National Education Association, *The State and Sectarian Education*, Research Bulletin (Feb. 1946) 36. The International Council of Religious Education advises that church buildings be used if possible. Shaver, *Remember the Weekday*, International Council of Religious Education (1946).

"Today, approximately two thousand communities in all but two states provide religious education in cooperation with the public schools for more than a million and a half of pupils." Shaver, *The Movement for Weekday Religious Education*, Religious Education (Jan.-Feb. 1946).

[24]Many uses of religious material in the public schools in a manner that has some religious significance have been sanctioned by state courts. These practices have been permitted: reading selections from the King James Bible without comment; reading the Bible and repeating the Lord's Prayer; teaching the Ten Commandments; saying prayers; and using textbooks based upon the Bible and emphasizing its fundamental teachings.

of its own constitution required exercises partaking of a religious ceremony. *People ex rel. Ring* v. *Board of Education,* 245 Ill. 334. In that case compulsory religious exercises—a reading from the King James Bible, the Lord's Prayer and the singing of hymns—were forbidden as "worship services." In this case, the Supreme Court of Illinois pointed out that in the *Ring* case, the activities in the school were ceremonial and compulsory; in this, voluntary and educational. 396 Ill. 14, 20-21.

The practices of the federal government offer many examples of this kind of "aid" by the state to religion. The Congress of the United States has a chaplain for each House who daily invokes divine blessings and guidance for the proceedings.[25] The armed forces have commissioned chaplains from early days.[26] They conduct the public services in accordance with the liturgical requirements of their respective faiths, ashore and afloat, employing for the purpose property belonging

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When conducted in a sectarian manner reading from the Bible and singing hymns in the school's morning exercise have been prohibited as has using the Bible as a textbook. There is a conflict of authority on the question of the constitutionality of wearing religious garb while teaching in the public schools. It has been held to be constitutional for school authorities to prohibit the reading of the Bible in the public schools. There is a conflict of authority on the constitutionality of the use of public school buildings for religious services held outside of school hours. The constitutionality, under state constitutions, of furnishing free text books and free transportation to parochial school children is in conflict. See *Nichols* v. *Henry,* 301 Ky. 434; *Findley* v. *City of Conneaut,* 12 Ohio Supp. 161. The earlier cases are collected in 5 A. L. R. 866 and 141 A. L. R. 1144.

[25]Rules of the House of Representatives (1943) Rule VII; Senate Manual (1947) 6, fn. 2.

[26]3 Stat. 297 (1816).

to the United States and dedicated to the services of religion.[27] Under the Servicemen's Readjustment Act of 1944, eligible veterans may receive training at government expense for the ministry in denominational schools.[28] The schools of the District of Columbia have opening exercises which "include a reading from the Bible without note or comment, and the Lord's prayer."[29]

In the United States Naval Academy and the United States Military Academy, schools wholly supported and completely controlled by the federal government, there are a number of religious activities. Chaplains are attached to both schools. Attendance at church services on Sunday is compulsory at both the Military and Naval Academies.[30] At West Point the Protestant services are held in the Cadet Chapel, the Catholic in the Catholic Chapel, and the Jewish in the Old Cadet Chapel; at Annapolis only Protestant services are held on the reservation, midshipmen of other religious per-

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[27]Army Reg., No. 60-5 (1944); U. S. Navy Reg. (1920), ch. 1, § 2 and ch. 34, §§ 1-2.

[28]58 Stat. 289.

[29]Board of Education Rules, ch. VI, § 4.

[30]Reg. for the U. S. Corps of Cadets (1947) 47: "Attendance at chapel is part of a cadet's training; no cadet will be exempted. Each cadet will receive religious training in one of the three principal faiths: Catholic, Protestant, or Jewish." U. S. Naval Academy Reg., Art. 4301 (b): "(b) Midshipmen shall attend church services on Sundays at the Naval Academy Chapel or at one of the regularly established churches in the city of Annapolis."

Morning prayers are also required at Annapolis. U. S. Naval Academy Reg., Art. 4301 (a): "Daily, except on Sundays, a Chaplain will conduct prayers in the messhall, immediately before breakfast." Protestant and Catholic Chaplains take their turn in leading these prayers.

suasions attend the churches of the city of Annapolis. These facts indicate that both schools since their earliest beginnings have maintained and enforced a pattern of participation in formal worship.

With the general statements in the opinions concerning the constitutional requirement that the nation and the states, by virtue of the First and Fourteenth Amendments,[31] may "make no law respecting an establishment of religion," I am in agreement. But, in the light of the meaning given to those words by the precedents, customs, and practices which I have detailed above, I cannot agree with the Court's conclusion that when pupils compelled by law to go to school for secular education are released from school so as to attend the religious classes, churches are unconstitutionally aided. Whatever may be the wisdom of the arrangement as to the use of the school buildings made with The Champaign Council of Religious Education, it is clear to me that past practice shows such cooperation between the schools and a non-ecclesiastical body is not forbidden by the First Amendment. When actual church services have always been permitted on government property the mere use of the school buildings by a non-sectarian group for religious education ought not to be condemned as an establishment of religion. For a non-sectarian organization to give the type of instruction here offered cannot be said to violate our rule as to the establishment of religion by the state. The prohibition of enactments respecting the establishment of religion do not bar every friendly gesture be-

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[31]The principles of the First Amendment were absorbed by the Fourteenth Amendment. *Pennekamp* v. *Florida*, 328 U. S. 331, 335.

tween church and state. It is not an absolute prohibition against every conceivable situation where the two may work together any more than the other provisions of the First Amendment—free speech, free press—are absolutes.[32] If abuses occur such as the use of the instruction hour for sectarian purposes, I have no doubt, in view of the *Ring* case, that Illinois will promptly correct them. If they are of a kind that tend to the establishment of a church or interfere with the free exercise of religion, this Court is open for a review of any erroneous decision. This Court cannot be too cautious in upsetting practices embedded in our society by many years of experience. A state is entitled to have great leeway in its legislation when dealing with the important social problems of its population.[33] A definite violation of legislative limits must be established. The Constitution should not be stretched to forbid national customs in the way courts act to reach arrangements to avoid federal taxation.[34] Devotion to the great principle of religious liberty should not lead us into a rigid interpretation of the constitutional guarantee that conflicts with accepted habits of our people. This is an instance where, for me, the history of past practices is determinative of the meaning of a constitutional clause not a decorous introduction to the study of its text. The judgment should be affirmed.

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[32]See *Whitney* v. *California*, 274 U. S. 357, 371; *Reynolds* v. *United States*, 98 U. S. 145, 166; *Cantwell* v. *Connecticut*, 310 U. S. 296, 303; *Cox* v. *New Hampshire*, 312 U. S. 569, 574, 576; *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 571; *Prince* v. *Massachusetts*, 321 U. S. 158.

[33]Cf. *Bob-Lo Excursion Co.* v. *Michigan*,—U. S.—.

[34]*Higgins* v. *Smith*, 308 U. S. 473; *Helvering* v. *Clifford*, 309 U. S. 331; *Comm'r* v. *Tower*, 327 U. S. 280; *Lusthaus* v. *Comm'r*, 327 U. S. 293.

VII

SUMMARY OF EVIDENCE AND ANALYSIS OF SUPREME COURT DECISION

The evidence has been submitted and we are now able in the light of the evidence to draw our conclusions.

First, the men who formulated our United States Constitution were men who believed in God as the Supreme Creator and Preserver of the Universe, and who also believed in religion as a vital element of strength within the State and Nation. Faced with the necessity of saving the infant nation from chaos and possible internal anarchy, they met in Philadelphia and after four months presented to the Congress for ratification by the States the Constitution as we have it with no religious provisions whatsoever, excepting that which provides that there shall not be any religious test ever required as a qualification for public office in the United States. Lacking any specific Bill of Rights and several States having ratified with the understanding that a Bill of Rights would be immediately added, James Madison, in the first Congress submitted a Bill of Rights containing twelve provisions, ten of which constituting our first ten amendments were accepted by the States and became a part of our Constitution the latter part of 1791. What Article 1, was meant to imply and safeguard certainly may be accepted upon the basis of the dec-

laration of James Madison its promulgator who declared it when pending to mean, "That Congress should not establish a religion, nor enforce the legal observance of it by law, nor compel men to worship God in any manner contrary to their conscience." Thus it was obviously an attempt to safeguard the religious freedom of conscience upon the part of the individual; also in the second clause recognizing the importance of religion within the State and Nation it provided that Congress shall make no law" prohibiting the free exercise thereof."

Madison's Remonstrance in the case of Virginia was against taxing and using State Funds for Sectarian purposes and not an argument against the primary importance of teaching religion itself.

The examination of the various State Constitutions show an unanimity of agreement as to essential nature and importance of religion for preservation of the State and promoting the general welfare; also essential unity in laws providing that State School Funds shall not be appropriated to give aid to any sect or denominational institution, and against permitting any sectarian instruction to be given in the public schools, and against providing any religious tests for admission into any State educational institutions. In many States, laws, providing that no teacher or pupil shall be compelled to attend any religious service within the institution or participate therein, are a part of the State Constitutions.

The History of Education within this nation would indicate a general acceptance of these fundamental principles and the gradual effort to apply them in matters of public school education within the various states. Thus while we have devolved a tax supported

system of free public schools with mandatory provisions of compulsory attendance, we have also tried to safeguard the liberties of the children of divergent faiths by demanding that no sectarian instruction shall be given in the Public Schools and that no public funds shall ever be appropriated for sectarian aid or purposes.

In the light of this evidence let us re-examine the Supreme Court Decision in the Champaign Case. Admittedly the fourteenth amendment was not involved in that case since the cost thereof was borne by outside groups.

The instruction and courses provided were wholly elective; children taking them must have parents' consent; courses were accredited although taught by outside teachers who were nevertheless subject to the public school Superintendent in any examination as to their scholastic qualifications. Classes were held upon school property and upon released time.

Within the limits that the courses presented were wholly elective, provided without touching the school funds, and meeting educational standards demanded by the school as a necessary provision for accreditization, the Constitution does not seem to have been violated although the courses were held in the school buildings upon partially released time.

While the appellant complains that her own freedom as well as that of her son was imperilled as a result of the very existence of this effort upon part of the Champaign Schools her claims since the courses were wholly elective must be balanced against the rights of the other citizens of Champaign who desired to secure for their own children the privileges provided for religious education also secured under the

second clause of Article 1, providing for the free exercise thereof (Religion). That the rights of an avowed atheist and her son should be construed to be more important than the rights of numerous other citizens would seem to the writer to be an abortion of justice.

Only upon one leg does the Supreme Court interpretation stand as defensible and just. If as stated in the majority opinion the instruction provided in the Champaign Case was sectarian, their decision was defensible and understandable. Obviously, however, courses may be provided through the agency of religious sects or groups without being in essence or content sectarian. Sectarian as implied by our Constitution means the control of and use of State Funds for the purpose of propagating the tenets and doctrines of any particular sect or denomination and such use of public school property or funds is definitely prohibited by our national law.

While sectarian control of and use of our school system or institutions is definitely prohibited by our national Constitution in its efforts to safeguard the religious freedom of the individual, the rights also guaranteed under the second clause of the first amendment guaranteeing the free exercise of religion have not been adequately defined and must be interpreted by providing within the very framework of our public school system and curriculum numbers of religious courses, non-sectarian in emphasis, that our American children may not be religiously disinherited but may grow up with some adequate knowledge of the religious origins and history of our nation and of the importance of religion in the life of the nation as as well as the individual. It would seem to me that no

Supreme Court Decision must be allowed to interfere with this fundamental right of American citizens and young people.

To the application of this concept and principle I shall apply myself in the concluding chapter.

VIII

QUO VADIS?

"That we may apply our hearts unto wisdom." Ps. 90:12.

"Happy is the man that findeth wisdom, and the man that getteth understanding. For the gaining of it is better than the gaining of silver, and the profit thereof than fine gold." Prov. 3:13-14.

"The fear of the Lord is the beginning of wisdom." Ps. 111:10.

"The soul of education is the education of the soul." —*Dupanloup.*

Quoting from President Daniel L. Marsh, in his 24th Annual Report to the Trustees of Boston University: "When we leave religion out of our educational program, we practically announce that life can be explained without God, which is the same thing as saying that either God does not exist or is of no consequence. The natural result is to rear a generation of practical atheists who live in an atmospheric pressure of secularism, and whose philosophy of life is crass materialism.

"One cause of the ills of modern society is the blindness, or at least the distorted vision, of the average person with respect to the centrality and essentiality of religion in education. When I plead for the rightful place of religion in education I am not thinking in sectarian terms."

It is my personal opinion that religious instruction,

non-sectarian in character, can be provided within our public schools under a legitimate interpretation of the United States Constitution, and that some more adequate effort must be made to do this to safeguard the liberties of our citizens as well as the welfare of our Republic.

With the churches, synagogues, church schools or classes must ever remain the obligation of providing whatever sectarian instruction as may seem necessary to promote the work and loyalty to the particular sect or denomination. On the other hand general religious instruction must become more closely integrated with our existing school system. Reasons for this seem to me to be fairly obvious. It must be integrated in order that in the minds of students religion may seem to be as important to learn about as is reading, writing, or geography. When it is "lugged in" by outside teachers and agencies, it always remains in the mind of students as an extra, and, therefore, not as important as other subjects provided in the regular course of study. Also if the religious instruction is important, it must be provided through our public schools in order to reach the multitudes of children growing up in homes where there is no interest nor effort to send them to church or Sunday School. Multitudes of young people are growing up today in a spiritual illiteracy which is a fertile soil of juvenile delinquency and crime. Some of these public school courses should be required as a foundation for an understanding and appreciation of our American heritage of religious freedom of conscience and action. Elective courses naturally appear to the mind as optional and less important than required subjects.

As Justice Reed in his dissenting opinion declares in the Champaign Case, it is difficult to find "what in the Champaign Plan" is unconstitutional unless it is as I have already intimated that the instruction was as declared sectarian although that fact is not stressed as the basis of that adverse decision against Champaign Schools. As indicated also the Supreme Court Decision has relevance only to that particular case, in any circumstances involving a violation of human rights and freedoms guaranteed under our Constitution.

In lieu of these facts it would seem to me that all other efforts to fill the present void in our educational system should be continued by as many groups and in as many places as opportunity provides. Also wherever state legislation permits released time, religious groups should be alert to take advantage of this opportunity for providing religious training and also to secure favorable legislation wherever possible since released time for religious education outside of school grounds and buildings seems at present not to be in any sense a violation of our Constitution.

But most important I believe is for religious leaders to get together with school authorities and to provide numerous courses, religious in content,but non-sectarian in character, for use in all school grades. Only in this way can the great multitude of students ever become aware of the importance of Bible Study and of the application of its fundamental truths in the solution of personal and social problems. Only the most biased and prejudiced could ever consider the Bible a sectarian book. Without some knowledge of its truths of universal application our young people are being presented with an emasculated system of education,

one as Justice Jackson indicates, "One can hardly respect a system of education that would leave the student ignorant of religious thought that moves the world society for a part in which he is being prepared."

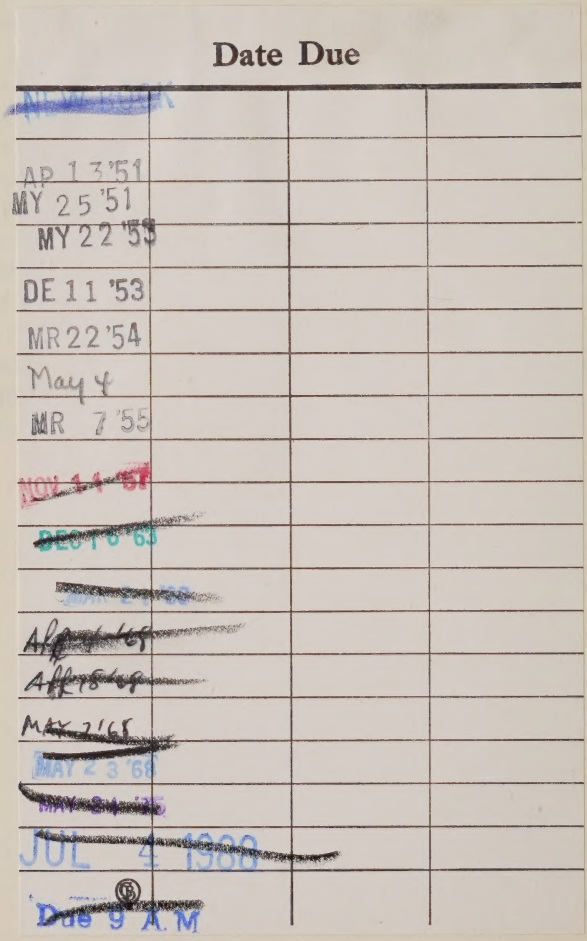
How shall we adequately teach American history without teaching concerning its religious origins and foundations? How teach English Literature without an understanding of the place and influence of the Bible upon our English tongue and literature? How teach the Fine Arts without estimating the value and important contribution of religion in the fields of music, sculpture and painting? Is it not as important to know something of Jewish History and of the contribution of that race to Religion as it is for our children to study the contributions of the Romans and the Greeks? In fact, religion has played such an important part in the history of mankind and of our civilization and nation in particular that to leave the student ignorant of this great field of human interest and endeavor is to illy prepare him for the real issues of life, culturally ignorant of religious truth and motivation.

Many courses should be prepared suitable for various ages and grades and of such practical value as will afford them aid in meeting successfully their many personal and social problems and adjustments.

Studies of the great characters of both the Old and the New Testament; standards of conduct as revealed in the ten commandments and the teaching of Jesus; relation of the prophetic teachings to our democratic ideals and concepts; how we got our English Bible; science and the Bible; all these reveal possible ap-

proaches and courses. These must be prepared, where not already in existence and use.

Should the Supreme Court at some future date declare any religious instruction at all to be unconstitutional,then interested church groups and patriotic citizens who believe in the importance of religious education must together press for a new amendment to our Constitution providing, "Religious instruction in our public schools, non-sectarian in character, shall not be deemed a violation of our United States Constitution or any amendments thereof." A national campaign to secure such enactment would serve in itself as a national effort emphasizing the place and importance of religion in the life of both State and Nation. Thus would be developed a new conscience supporting such legislation,while such an amendment would forever assure religious education as an integral part of our educational system and culture (non-sectarian in content and control). This I believe would work for the benefit of the nation as a whole while its omission or neglect is fraught with detriment to the individual and with menace to the liberties and safety of the very nation. The King's business requires haste.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